Easton, Pennsylvania

August 17, 2017

A regular meeting of the Northampton County Council was held on the above date with the following present: John Cusick, President; Glenn A. Geissinger, Vice President; Mathew M. Benol; Matthew H. Dietz; Margaret L. Ferraro; Kenneth M. Kraft; Hayden Phillips; Seth Vaughn; Robert F. Werner; Linda M. Zembo, Clerk to Council and Phil D. Lauer, Solicitor to Council.

Prayer

Mr. Cusick led County Council in a moment of silence.

Pledge of Allegiance

Mr. Benol led County Council in the pledge of allegiance.

Approval of the Minutes

Mr. Werner made the following motion:

Be It Moved By the Northampton County Council that the minutes of the August 3, 2017 meeting shall be approved.

Mr. Dietz seconded the motion.

The minutes were approved by voice acclamation.

Confirmation of Appointments

Mr. Kraft introduced the following resolution:

R. 84-2017 RESOLVED, by the Northampton County Council that the following individuals shall be confirmed in their re-appointments as indicated hereafter:
Mr. Phillips stated as liaison to the Lehigh Valley Planning Commission he had worked with all these individuals and would recommend them.

As there were no further questions or comments, Mr. Cusick called for the vote.

The vote: Kraft, "yes"; Dietz, "yes"; Ferraro, "yes"; Geissinger, "yes"; Phillips, "yes"; Vaughn, "yes"; Werner, "yes"; Benol, "yes" and Cusick, "yes".

The resolution was adopted by a vote of 9-0.
Mr. Dean Browning, 2432 Congress, Allentown, PA - provided copies of documentation pertaining to H.R. 3003 that amends the Immigration and Nationality Act to prohibit any Federal, State or local government from prohibiting any government entity, official or employee from complying with the immigration laws or cooperating with Federal law enforcement of such laws and H.R. 3004 that amends the Immigration and Nationality Act to revise provisions relating to the re-entry of removed aliens (see Attachments #1, #2 and #3).

Mr. Browning requested County Council pass a resolution to be sent to Senators Pat Toomey and Robert Casey asking them to vote for these two bills when they were offered for consideration.

Mr. Browning advised H.R. 3004 pertained to Kate's Law, which came about after Ms. Kathryn Steinle was murdered by an illegal immigrant after he had been arrested and deported from the United States five previous times. He further advised the purpose of Kate's Law was to increase the penalties for those illegal immigrants who were arrested and deported and then subsequently returned to the United States.

Mr. Browning stated H.R. 3003 the "No Sanctuaries for Criminals Act" was a companion piece to H.R. 3004. He further stated not only did the penalties have to be increased for those illegal immigrants that came into the country after they had been deported, but jurisdictions had to be encouraged to report illegal immigrants in this country who commit crimes.

Mr. Browning advised currently there was a range of jurisdictions that did not do that because they did not want to or they were under a Court Order preventing them from honoring detainer requests, which was the primary tool that Immigration and Customs Enforcement (ICE) used to apprehend and deport those criminals.

Mr. Browning stated under H.R. 3003 the Department of Homeland Security would be required to annually prepare a report of non-compliance jurisdictions to use as a basis to withhold funding to those jurisdictions, it would remove legal liability from any jurisdiction that honored a detainer request issued by ICE and it would provide the private right of action by victims or their survivors against non-compliance jurisdictions.
Mr. Browning advised it was important to note that neither of these bills dealt with normal immigration or the huddled masses yearning to be free, but with illegal immigrants that had circumvented the legal immigration process of this country and then compounded that by committing crimes while here.

Controller’s Report

Mr. Stephen Barron, Controller, was not present at the meeting.

County Executive Report

Mr. John A. Brown, County Executive, stated the County typically had to reserve $9 million a year for its Workers Compensation program, but with the changes they made that had been reduced to $6 million. He further stated from working on the 2018 budget it appeared that Gracedale would again end the year in the black.

In answer to Mr. Kraft’s question as to whether there was an update on the purchase of the Human Services Building, Mr. Brown advised the first opportunity to exercise that option was March of 2019. He further advised they have reached out to the owner to see if it could be facilitated earlier, but he had not yet responded.

Central Booking Center Fees

Mr. Phillips stated at the July 20, 2017 meeting an ordinance was proposed regarding Central Booking Center Fees being designated to the booking center where the individual was booked. He further stated it was tabled and in the meantime, he, Mr. Dietz, Mr. Barron and Lehigh Township Supervisor Cindy Miller met and reviewed Mr. Barron’s audit report on the fees.

Mr. Phillips advised Ms. Miller took the information back to her Board of Supervisors with the intention of determining the willingness and path in developing a document to memorialize their commitment to the proposed ordinance.

Mr. Phillips stated this was going to take some time because Ms. Miller was not just working with her Board of Supervisor, but also the five other municipalities. He further
stated since it did not appear the matter would be resolved before the 2018 budget cycle, he and Mr. Dietz planned to make a one-time funding request in the 2018 budget for Lehigh Township and Bethlehem.

Mr. Phillips advised he planned to work with County Council’s Courts and Corrections Committee in approaching the Courts to have a discussion regarding the impact of the fee collection on the funding of the booking centers.

Mr. Phillips stated whether the ordinance was adopted or not there was going to be a continuing interest in the tracking of the fees from the various booking centers so he would like to talk to the Administration to determine how they could be easily tracked and whether the booking centers could pay for themselves.

Mr. Kraft advised he did not understand why this was being brought up again because the five municipalities decided to have a booking center to cut down on their expenses of processing someone in Easton and there was to be an agreement as to how they were going to fund it. He further advised the County already gave them money and now he wanted to give them more of the taxpayers’ money.

Mr. Kraft stated it was explained that even though fees were charged they were not always collected and that the County’s booking process had been reduced to 15 minutes and was operating at a loss.

Mr. Phillips advised no tax dollars were involved because the money would come from the fees that were charged. He further advised if the fees that were generated by the booking center did not cover the expenses; the municipalities had to pick it up.

Consideration of Personnel Request Resolution: Department of Human Services - Mental Health, Developmental Programs and Early Intervention Division

Mr. Kraft introduced the following resolution:

R. 85-2017 IT IS HEREBY RESOLVED by the Northampton County Council that the one position of Fiscal Officer I, pay grade HS-38A, step 3C, salary $50,623 be promoted to Fiscal Officer II, pay grade HS-40, step 5E, salary $60,368 in the
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Department of Human Services - Mental Health, Developmental Programs and Early Intervention Division, effective August 17, 2017.

As there were no questions or comments, Mr. Cusick called for the vote.

The vote: Kraft, "yes"; Ferraro, "yes"; Geissinger, "yes"; Phillips, "yes"; Vaughn, "yes"; Werner, "yes"; Benol, "yes"; Cusick, "yes" and Dietz, "yes".

The resolution was adopted by a vote of 9-0.

Consideration of an Article XIII Contract Approval Resolution: K.C. Mechanical

Mr. Geissinger introduced the following resolution:

R. 86-2017 WHEREAS, Northampton County Administrative Code Article XIII Procurement and Disposition of County Property, Section 13.16 Contracts and Agreements c. (1) requires approval of County Council for "...any contract exceeding $100,000, which was awarded using the Competitive Negotiation, Negotiation After Competitive Sealed Bidding, and Non-Competitive Negotiation source selection methods. For contracts with renewal clauses, the entire potential payout if all renewal clauses are exercised under the terms of the contract must be considered when determining if Council approval is necessary"; and

WHEREAS, on August 8, 2017, the Northampton County Council received a request from the County Executive for County Council to adopt a resolution approving a contract, in the amount of $292,000 with K.C. Mechanical for high pressure steam line replacement for a term of one year.

NOW, THEREFORE, BE IT RESOLVED that the Northampton County Council does hereby concur with the recommendation of the County Executive, as set forth in the attached documentation to approve a contract with K.C. Mechanical for high pressure steam line replacement.

As there were no questions or comments, Mr. Cusick called for the vote.
The vote: Geissinger, "yes"; Kraft, "yes"; Phillips, "yes"; Vaughn, "yes"; Werner, "yes"; Benol, "yes"; Cusick, "yes"; Dietz, "yes" and Ferraro, "yes".

The resolution was adopted by a vote of 9-0.

Update on the County’s Bonds

Mr. Dietz asked if Mr. James Hunter, Director of Fiscal Affairs, could appear at an upcoming Finance Committee meeting and explain the status of the County’s bonds.

Mr. Geissinger indicated he would ask him to appear before the next meeting.

Human Services Committee Report

Mr. Vaughn stated at the Human Service Committee meeting held earlier in the evening it was reported that Gracedale increased its Quality Measures so they were moving in the right direction.

Mr. Vaughn advised Ms. Allison Frantz, Director of Human Services, provided an update on her department. He further advised she indicated there were still several vacancies, but they were continually trying to fill them.

Capital Projects and Operations Committee Report

Mr. Phillips stated they reviewed the 2017 Capital Improvement Projects and 2013 Bond Issue Projects at the Capital Projects and Operations Committee meeting held yesterday. He further stated since a thorough review was received at that meeting there would be no meeting in September.

Lehigh-Northampton Airport Authority Liaison Report

Mr. Geissinger advised the Executive Committee and Board of Governors of LNAA approved $2.5 million of Federal Aviation Administration grants to fund 90% of different engineering and expansion projects at the Lehigh Valley International Airport and Queens City Airport. He further advised the remaining funding would come from State revenue and LNAA.
In response to Mr. Cusick’s question as to whether Braden Airpark received any funding, Mr. Geissinger stated it did not because this was a Federal Aviation Administration grant. He further stated a full report on Braden Airpark would be given at the September 7, 2017 meeting.

Conservation District Liaison Report

Mrs. Ferraro advised before the Conservation District Annual Clambake they took a tour of the FedEx site and the Cement Museum.

Community Development Block Grant - Wesley United Methodist Church Backpack Program

Mr. Dietz stated at the last Economic Development Committee meeting, Pastor Andrew Krpata and Ms. Sue Kiefner talked about the Wesley United Methodist Church Backpack Program and he just wanted to let everyone know that it would take place this Saturday.

Gracedale Familyfest

Mr. Werner advised the Gracedale Familyfest would be held at 4:00 p.m. on September 12, 2017.

County Commissioners Association of Pennsylvania (CCAP) Conference

Mr. Cusick stated he attended the CCAP Conference where Secretary of Aging Teresa Osborne gave a speech. He further stated Secretary of Corrections John Wetzel talked about the mental health issues occurring in the prisons.

Mr. Cusick advised they received an update from Pennsylvania Emergency Management Agency on the 911 Statewide initiative and Senator Casey talked about the Federal budget where the Community Development Block Grant issue did come up.

Mr. Cusick stated he also attended talks regarding the upcoming 2020 census, County-Municipal Cooperation projects, trends in Juvenile Justice and the opioid issue.
Tentative Schedule for Budget Hearings

Mr. Cusick stated a tentative schedule had been set for the Budget Hearings, which will be held at 4:30 p.m. on October 11, 2017 - General Government; October 25, 2017 - Courts and Corrections; November 8, 2017 - Department of Human Services and Department of Community and Economic Development; November 29, 2017 - Department of Public Works and Capital Improvement Projects. He further stated the meeting to review amendments and personnel requests would be held on December 6, 2017 with possible adoption of the budget at the meeting to be held on December 7, 2017 or December 14, 2017.

County Bond Update

Mr. Brown advised he would like to postpone the presentation on the County bonds until the October Finance Committee meeting as the Department of Fiscal Affairs was currently involved in preparing the 2018 budget.

Adjournment

Mr. Dietz made a motion to adjourn the meeting.

Mr. Benol seconded the motion.

The motion to adjourn passed unanimously by acclamation.

Linda M. Zembo
Clerk to Council
Two Immigration Enforcement Bills Are Introduced in the House

By Dan Cadman on June 27, 2017

Two immigration bills worthy of notice are wending their way through the congressional maze, both introduced by Rep. Bob Goodlatte (R-Va.), who is chair of the House Judiciary Committee. The two bills are the much-discussed “Kate’s Law,” H.R. 3004, and the “No Sanctuaries for Criminals Act,” H.R. 3003.

Neither bill, considered by itself, takes a holistic view of immigration enforcement; put together, they come closer to the mark. The problem of course is that because they are two separate bills, there is no guarantee that they will both proceed to passage.

What would be preferable would be a broader approach to amending those portions of the immigration law having to do with enforcement, detention, and removal — specifically, the Davis-Oliver Act introduced in both the House and the Senate in prior years, and which underwent mark-up again in the House last month (see here, here, and here). We’ll see where that goes.

In the meantime, you play the hand you’re dealt, and in this case, that means the two bills described below.

The more important of the two is H.R. 3003, the “No Sanctuaries for Criminals Act.” In addition to Goodlatte, cosponsors of the “No Sanctuaries” bill include Reps. Steve King (R-Iowa) and Andy Biggs (R-Ariz.). This bill tackles the issue of sanctuary jurisdictions head-on, by rewriting the prohibitions on state or local governments in any way impeding or inhibiting cooperation with federal immigration officials, or exchanging information with them, or notifying them of the existence of an alien who appears to be in the U.S. in violation of the immigration laws (including, of course, alien criminals in the custody of state or local enforcement authorities). Those prohibitions are encompassed to some extent in existing 8 U.S.C. Sec. 1373, but this bill puts teeth into failure to comply. That’s welcome news because while the so-called sanctuary movement is just one of many problems with immigration enforcement today, it is one of the most urgent problems. This bill would go far toward restoring the rule of law throughout the nation.

Significantly, the “No Sanctuaries” bill predates eligibility for various federal enforcement funds and grants upon such cooperation. The bill lays out a requirement that the DHS secretary must annually prepare a list of noncompliant state and local governments, which list is to be reported to Congress. State or local governments determined to be noncompliant and placed on the list are ineligible for a multiplicity of programs administered by both the Departments of Justice and Homeland Security; those funds that cannot be allocated to a government because of noncompliance may be reallocated to other governments which have shown themselves to be cooperative with federal immigration enforcement efforts.

The bill also establishes new statutory language authorizing detainers issued by federal immigration authorities after a determination of “probable cause,” a phrase that is defined in the bill. State or local governments that comply with the detainers are provided with immunity from suit. The bill also provides that in the event a lawsuit is filed, the proper defendant is the federal government, and not the state or local government (or its contracting detention entity) which honors the detainer. This is important because among the reasons some state or local enforcement agencies have become reluctant to honor immigration detainers is not just fear of being sued, but also of being left high and dry by federal agencies responsible for immigration law enforcement and forced to fend for themselves in defending against such suits.

In addition, H.R. 3003 provides that when state or local governments fail or refuse to comply with federal immigration enforcement efforts, then DHS and its component agencies may similarly decline to turn over to them, aliens who are in federal immigration custody against whom state processes such as warrants, writs, or summonses have been issued.

Another section of the bill provides for a private right of action by victims or their survivors against a state or its
political subdivision if that state or local government has released a removable alien from custody despite existence of an immigration detainer, if that alien goes on to commit murder, rape, or any felony, as defined by the state, for which the alien was convicted and sentenced to a term of imprisonment of at least one year.

Finally, the bill contains a section that amends existing 8 U.S.C. Sec. 1226, having to do with arrest and detention of aliens, by requiring the DHS secretary to maintain custody of an alien during the pendency of removal proceedings if that alien is a criminal alien as defined by certain provisions of the immigration laws (including, as specifically included in this bill, those convicted of driving under the influence of alcohol or drugs); as well as illegal border crossers, and those whose visas have been revoked or who have violated or overstayed the terms of their nonimmigrant admission. This same provision also modifies through limitations the conditions under which the Immigration courts (a part of the Justice Department) may review custody and detention decisions made by DHS.

The other bill, H.R. 3004 or "Kate's Law," is named for Kate Steinle, murdered by a multiply-deported illegal alien in San Francisco, who died in her father's arms. This is the House incarnation of a bill introduced previously in the upper chamber by Sen. Ted Cruz (R-Texas) about a year ago, which went nowhere. The bill would amend 8 U.S.C. Sec. 1326, which is the provision of law criminalizing reentry, or attempted reentry, of an alien into the U.S. after having been removed.

Specifically, the bill restructures that part of the statute which deals with redivivists and those whose removal was based on aggravating factors such as criminal histories. Sentencing penalties contained in the existing sections of law are both amplified and enhanced. That's the good news.

The so-so news is this: The enhancements don't constitute mandatory minimum sentences under the proposed structure. What this means is that because the penalties prescribed aren't mandatory, whatever time is actually imposed on convicted reentrants by presiding judges will be governed by U.S. Sentencing Commission guidelines, which were themselves recently amended, as a consequence of which they generally (although not always) tend to lower the amount of time spent in prison by individual aliens convicted of immigration crimes. The harsh reality, though, is that if the proposed restructuring did make the new sentence mandatory, the bill likely wouldn't pass because many Republicans, as well as Democrats, are in favor of "criminal justice reform," which has in the past couple of years resulted in many federal prisoners — including thousands of aliens — not only not receiving long sentences, but also being released significantly earlier than one would think by looking at their sentences. (See here and here.)

In sum, the raising of at-least-theoretically maximum permissible sentences for illegal reentry by alien criminals does no harm, and may do some good — but it must assuredly would be a mistake to think that, as a standalone, this bill cures the ills that resulted in Kate Steinle's murder. It doesn't, because nothing in the bill requires state/local cooperation with federal immigration agents — that's why the "No Sanctuary" bill is the more important of the two.

Absent that, even if the most heinous of alien criminals makes his way unlawfully into the United States and is taken into custody by police in a sanctuary jurisdiction, he will likely be released to the street, with potentially horrendous consequences. And it's been my experience after nearly 40 years of enforcing and observing and commenting on immigration matters, that if something bad can happen, it will happen (often, sadly, sooner rather than later).

For whatever it's worth, the GovTrack website gives each of these bills only a 1 percent chance of passage. This discouraging, when one considers that Republicans control both chambers of Congress and the White House. If even half measures can't be taken with that trifeacta having been won, then exactly what does it take to pass meaningful immigration enforcement legislation?

Topical: House Legislation
The Senate Should Pass ‘Kate’s Law’ and the No Sanctuary for Criminals Act

The need for laws such as these two pieces of legislation is clear.

By Sapna Rampersaud — July 26, 2017

On June 29, the House passed two amendments to the Immigration and Nationality Act: Kate’s Law and the No Sanctuary for Criminals Act. The Senate, which is expected to take up this legislation soon, should approve it.

Kate’s Law is named after Kathryn Steinle, a 32-year-old American citizen who allegedly was fatally shot in 2015 in San Francisco by an illegal immigrant, Juan Francisco Lopez-Sanchez. Lopez-Sanchez had been deported from the U.S. five times and reentered illegally. At the time of Kate’s death, he was on probation in Texas after being convicted of seven felonies, including heroin possession, narcotic manufacturing, and unauthorized reentry.

Steinle’s murder sparked conversation about the need for stricter border control. Kate’s Law provides for prison sentences of up to two years for “any [non-criminal] alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion, deportation, or removal is outstanding, and subsequently enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States.” And it establishes longer prison terms for criminal aliens who enter illegally. (For example, if a convicted felon who served more than 30 months returns to the U.S. illegally, he will be subject to imprisonment for a maximum of 15 years; if he served more than 60 months, he will be subject to a term of up to 20 years).

Criticisms of earlier versions of the bill focused on its inclusion of mandatory minimum sentences. But the current version responds to this criticism by declining to mandate prison time — rather, it states that illegal reentry will be punished with a monetary fine, a prison term, or both.

Opponents of the bill emphasize that there is no evidence clearly establishing that illegal immigrants commit crimes at higher rates than U.S. citizens. This is a false comparison. American citizens will be in the United States regardless, but we can choose to deter and prevent illegal immigration and whatever crime might come with it. Recidivism is of particular concern among previously convicted aliens. According to an analysis by the Boston Globe, of “323 criminal [aliens] released in New England from 2008 to 2012... 30 percent committed new offenses, including rape, attempted murder, and child molestation—a rate that is markedly higher than Immigration and Customs Enforcement officials have suggested to Congress in the past.”

The second piece of legislation, the No Sanctuary for Criminals Act, targets so-called sanctuary jurisdictions, which attempt to legally bar their officials from complying with federal immigration enforcement. Mark
Krikorian, executive director of the Center for Immigration Studies and frequent writer at NRO, tells me that “there is a practical threat and then a constitutional or governance threat” from sanctuary cities. The former is that “they will protect criminal aliens that will then go on to kill Americans.” The “threat to governance is that these jurisdictions are taking immigration law into their own hands — they’re deciding which illegal immigrants are subject to deportation and which aren’t.” According to the Center for Immigration Studies, current sanctuary cities include Los Angeles, San Francisco, Denver, Washington, D.C., Chicago, New Orleans, Boston, Newark, New York City, Philadelphia, and Dallas.

The act establishes that “no Federal, State, or local government entity, and no individual, may prohibit or in any way restrict, a Federal, State, or local government entity, official, or other personnel from complying with the immigration laws . . . or from assisting or cooperating with Federal law enforcement entities, officials, or other personnel regarding the enforcement of these laws.” Jurisdictions that fail to comply with this requirement would become ineligible for certain forms of funding and grants from the Department of Justice and the Department of Homeland Security.

Some critics of the No Sanctuary for Criminals Act allege that its provision withholding federal funds is unconstitutional. Two hundred ninety-two law professors and legal scholars wrote in a letter to President Trump that “terminating federal funding from these jurisdictions in order to coerce them to rescind their ‘sanctuary’ policies violates the Tenth Amendment [and] exceeds the federal government’s powers under the Spending Clause.”

As to the Tenth Amendment, in Arizona v. United States (2012), the Supreme Court held that “the removal process is entrusted to the discretion of the Federal Government” and it is a violation for “state officers to decide whether an alien should be detained for being removable,” which is precisely what occurs in sanctuary cities. The states have “powers not delegated to the United States by the Constitution,” but the Supreme Court has long held that jurisdiction over immigration law and enforcement belongs to the federal government and the states should not interfere in it. Huyen Pham, a law professor at Texas A&M, published an article in the University of Cincinnati Law Review that supports the position that immigration enforcement is a federal power. Regardless of “Tenth Amendment constraints,” she writes, “the Supremacy Clause states that federal law is the law of the land, preempting any conflicting state or local law.”

As to the Spending Clause, the Supreme Court held in NFIB v. Sebelius (2012) that the federal government had violated the constitutional principle of anti-coercion when it tried to withhold 100 percent of states’ Medicaid funding if they did not participate in Medicaid expansion. But this does not mean that the federal government may not ever withhold funding. In 1987, the Supreme Court found in South Dakota v. Dole that Congress could do so insofar as the withholding was “relevant to the federal interest in the projects and the overall objectives thereof.” The case concerned the federal government’s withholding of 5 percent of states’ highway funds if they did not raise the drinking age to 21. This was deemed constitutional because highway funds are meant to ensure safer travel (which was the federal project or objective), and so was raising the drinking age.

I’d argue that Dole’s precedent, rather that NFIB’s, is applicable to the No Sanctuary for Criminals Act because, as Krikorian tells me, “the programs for which money would be withheld are specifically related to law enforcement.” Any funds that are to be withheld come from immigration-, crime-, national-security-, or justice-related funding sources. Withholding funds from states that do not comply with federal immigration law is
"relevant to the federal interest" and "objectives" of the programs for which the funds are intended. In other words, if the federal government makes it an interest to enforce immigration law and funding states would facilitate that, then it is fair to allow the government to withhold those funds if the states fail to comply with the enforcement of these laws. Pham makes a similar argument when she states that, according to section 434 of the Welfare Reform Act and section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act, which prohibit government entities from restricting the authority of employees to send immigration information to the federal government, "Congress has authority to regulate immigration matters" and use its "Spending Clause power to entice that joint enforcement" of immigration laws between the state and federal governments.

The need for laws such as these two pieces of legislation is clear. Many lives have been taken at the hands of aliens who had no right to be in this country: During the Obama administration, 121 deportable aliens were detained, released, and subsequently convicted of hundreds of murders that could have been avoided. In a letter written to the assistant secretary of U.S. Immigration and Customs Enforcement, three senators (including Jeff Sessions, now the attorney general) wrote that “of the 36,007 criminals [ICE] released from custody in FY 2013, 1,000 have been re-convicted of additional crimes in the short time since their release, including felonies and gang-related offenses.” By permitting sanctuary cities to harbor criminals and not punishing those who illegally reenter the U.S., we are subjecting our citizens to unnecessary threats. The Senate should pass Kate’s Law and the No Sanctuary for Criminals Act as soon as possible, so that they can be signed into law.

READ MORE:
Who Owns the Border-Death Truck Tragedy?
Trump Is Winning the Immigration Debate
Is Immigration to the U.S. an Entitlement?

— Sapna Rampersaud is an editorial intern at National Review
Declined Detainer Outcome Report

What is a detainer?

U.S. Immigration and Customs Enforcement (ICE) issues detainers to federal, state, and local law enforcement agencies to provide notice of its intent to assume custody of a removable alien detained in federal, state, or local custody. A detainer requests that the law enforcement agency notify ICE as early as practicable - ideally at least 48 hours - before a removable alien is released from criminal custody and briefly maintain custody of the alien for up to 48 hours to allow DHS to assume custody for removal purposes.

What is a declined detainer?

When law enforcement agencies fail to honor immigration detainers and release a criminal alien onto the streets, they have declined an ICE detainer. This undermines ICE's ability to protect public safety and carry out its mission. Federal immigration laws authorize DHS to issue detainers and provide ICE broad authority to detain removable aliens.

How is an individual placed under a detainer?

When an individual is booked into custody by a law enforcement agency, his or her biometric data is automatically routed through federal databases to the FBI. The FBI shares this information with ICE. If ICE has probable cause to suspect the individual is a removable alien, ICE sends a detainer to the law enforcement agency.

Why is ICE providing these reports now?

The president's Executive Order 13768, Enhancing Public Safety in the Interior of the United States, and DHS Secretary Kelly's memorandum on the implementation of the same, instructs the ICE Director to make this report public.

Why do some jurisdictions ignore detainers?

In some cases, state or local laws, ordinances, or policies restrict or prohibit cooperation with ICE. In other cases, jurisdictions choose to willfully decline ICE detainers and release criminals back into the community. The results in both cases are the same: aliens released onto the streets to potentially reoffend or harm individuals living within our communities.
Why should the public care if jurisdictions don’t observe ICE detainers?

If jurisdictions do not honor ICE detainers, criminals are released into communities, where they can commit more crimes and are subject to at-large arrests which may be disruptive to communities. Three examples of criminal aliens who are subject to removal but were released despite the issuance of an active detainer within the last few months follow; all have been re-arrested and are currently in custody:

- Milton Herrera-Lopez was released from local custody when a detainer lodged with Philadelphia authorities was not honored. The Guatemalan national has a previous conviction for two counts of indecent exposure involving minors.
- Estivan Rafael Marques Velasquez, a self-admitted MS-13 gang member, was released from New York City custody with an active ICE detainer in place. The Salvadoran national has a criminal history in the United States which includes reckless endangerment in the second degree, criminal possession of a weapon in the fourth degree, and disorderly conduct.
- Ramon Aguirre Ochoa was deported in May 2009. In 2015, he was arrested on domestic aggravated assault charges in Philadelphia. The charges were dismissed, despite ICE filing a detainer to take custody and remove him from the country again. Philadelphia ignored that detainer and released Aguirre Ochoa back into the community. He was arrested again in Philadelphia on July 28, 2016, and charged with involuntary sexual intercourse, unlawful contact with a minor, unlawful restraint, false imprisonment, indecent assault on person less than 13, indecent exposure, and simple assault.

Does ICE still work with jurisdictions that do not observe detainers on other law enforcement actions?

Yes. ICE is committed to maintaining and strengthening its relationships with local law enforcement. ICE continues to collaborate with all law enforcement agencies to help ensure that individuals who may pose a threat to our communities are not released onto the streets to potentially reoffend and harm individuals living within our communities.

Where does the list come from?

ICE maintains records for each detainer or request for notification that is issued and updates those records when a detainer or request for notification is declined. The list is generated from this data.

Why is the public safer when jurisdictions honor ICE detainers?

When criminal aliens are released from local or state custody, they have the opportunity to reoffend. There are also many risks and uncertainties involved when apprehending dangerous criminal aliens at-large in the community. It takes careful planning and extensive resources to mitigate those risks and make a safe apprehension in a community setting. It is much safer for everyone - the community, law enforcement, and even the criminal alien - if ICE officers take custody of the alien in the controlled environment of another law enforcement agency as opposed to visiting a reported alien's residence, place of work, or other public area.

What is ICE’s overall mission? Why do they want the detainers enforced?

ICE is committed to using its unique enforcement authorities and available resources and tools to promote national security, uphold public safety, and preserve the integrity of our immigration system. The use of detainers is an efficient, effective and safe means to carry out ICE’s mission.

Are detainers placed on random criminal aliens?
ICE places detainers on individuals whom ICE has probable cause to suspect are removable aliens in state and local law enforcement agency custody on criminal charges.

**Are the jurisdictions or agencies on this list considered sanctuary locations?**

The Declined Detainer Outcome Report (DDOR) is intended to provide the public with information regarding criminal actions committed by aliens and any jurisdiction that ignores or otherwise failed to honor any detainers or requests for information with respect to such aliens. As set forth in Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*, the Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Department of Homeland Security (DHS) continues to evaluate the appropriate criteria for such designation.

**How does the report inform the decision on whether a location is a sanctuary jurisdiction?**

The president's Executive Order, *Enhancing Public Safety in the Interior of the United States*, requires publication of this report. The report lists locations that have ignored or otherwise failed to honor an immigration detainer or request for notification. As set forth in the Executive Order, the Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. DHS continues to evaluate the appropriate criteria for such designation.

**My jurisdiction is on the Declined Detainer Outcome Report. Will we lose our federal funding? What federal funding might my jurisdiction lose? For example, if a natural disaster occurs, will we receive federal assistance?**

The DDOR is intended to provide the public with information regarding criminal actions committed by aliens and any jurisdiction that ignores or otherwise failed to honor any detainers or requests for notification with respect to such aliens. ICE does not administer grants, and inclusion on the DDOR will not automatically result in ineligibility for grants. Section 9(a) of the Executive Order recognizes the authority of the Attorney General and the Secretary of Homeland Security, in their discretion and consistent with law, to ensure that jurisdictions that willfully refuse to comply with 8 USC § 1373 are not eligible to receive grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. DHS is currently working to develop a process, in coordination with the Department of Justice and other interagency partners, to address this requirement of the EO.

**Does this report include Requests for Notification (I-247N)? If so, why?**

Yes. The Request for Voluntary Notification (Form I-247N) is one of the tools ICE has used to notify law enforcement agencies of its interest in taking custody of an alien in state or local custody. The declination of Requests for Voluntary Notification also result in the release of criminal aliens, which provides an unnecessary risk to public and officer safety as ICE personnel are forced to arrest such aliens in an at-large setting. Although this report includes information relating to Form I-247N, DHS will be replacing Forms I-247D, I-247N, and I-247X in the near future. Information related to the superseding detainer form and its predecessors will be documented and reported by ICE going forward. Until fully vetted, reviewed, and approved, ICE will utilize the existing detainer and notification forms as an interim measure.

This report notes that it may reflect instances in which a law enforcement agency may have provided notification to ICE in advance of an alien’s release, but where the LEA did not provide "sufficient advance notification" for ICE to arrange the transfer of custody prior to release due to geographic limitations, response times, or other logistical reasons. What is sufficient advance notification?

Lack of sufficient advance notification is based on the judgment of immigration officers, taking into consideration geographic limitations, response times, and other local logistical details. Advance notification is sufficient when ICE is given enough time to mobilize its resources to
effectuate a safe transfer into ICE custody. Sufficient advance notice is a commonly understood standard for law enforcement jurisdictions working closely together.

How many of these instances were included in this report for my jurisdictions? Please provide the details of these instances and why ICE thought they did not have sufficient advance notification.

Detainers and Requests for Notification are not honored for a variety of reasons, as noted in the Declined Detainer Outcomes Report. ICE documents non-honored Detainers and Requests for Notification once discovered by ICE personnel during their enforcement activities. In instances of insufficient notification to ICE, these are generally cases in which the law enforcement agency did not provide ICE with enough time to mobilize its resources to effectuate a safe custody transfer.

Is DHS changing its legal position that ICE detainers are voluntary?

DHS has not retreated from its position that detainers serve as a legally-authorized request, upon which a law enforcement agency may rely, to continue to maintain custody of the alien for up to 48 hours so that ICE may assume custody for removal purposes.

The February 21 DHS implementing memorandum on the Executive Orders stated that DHS will eliminate the existing forms (I-247D, I-247N, and I-247X) and replace them with a new form to more effectively communicate with recipient law enforcement agencies. Why are old forms still being used? When will they be replaced?

DHS is in the process of creating a new detainer form to more effectively communicate with recipient law enforcement agencies. Although this report includes information relating to Form I-247N, DHS will be replacing Forms I-247D, I-247N, and I-247X in the near future. Information related to the superseding detainer form and its predecessors will be documented and reported by ICE going forward. Until fully vetted, reviewed, and approved, ICE will utilize the existing detainer and notification forms as an interim measure.

Why are jurisdictions listed here when they are prohibited from honoring detainers based on state laws, binding judicial opinions, or consent decrees limiting detainer compliance?

Regardless of the reason for which a jurisdiction does not honor ICE detainers or requests for notification, such action by the jurisdiction nonetheless adversely impacts public safety. When a jurisdiction declines to honor an ICE detainer or request for notification, a criminal alien is released into the community, where he or she has the opportunity to commit additional crimes, rather than being safely detained and processed for removal by ICE.

What does "notable criminal activity" mean? Why aren't all criminal charges and convictions listed in this report?

"Notable criminal activity" documents egregious charges and convictions of the alien for whom a detainer was not honored. This report includes criminal charges contained in local, state, and federal indexes and recorded in ICE's database.

I have information that contradicts what is on this report. What is the process for correcting the information on this report?

Concerns from the community can be relayed to a local community relations officer who may be contacted via a local ICE field office, which can be found at: https://www.ice.gov/contact/field-offices.
Is this report inclusive of all declined detainers?

This report is inclusive of declined detainers that were not honored by a law enforcement agency, discovered by ICE personnel during their enforcement activities as not being honored, and documented in ICE systems during the reporting period specified.

Can I get more information about a specific case?

Members of the public may submit requests for information to ICE’s Freedom of Information Act (FOIA) Office. Each request will be evaluated under the disclosure provisions of FOIA.