

Local Involvement in Immigration and Customs Enforcement

Illegal immigration is a contentious political issue in the U.S., especially in communities like Sonoma County where the population includes substantial numbers of undocumented residents. As we wrestle with these social and economic issues, it is important to understand exactly how immigration law is enforced in Sonoma County.

It is particularly important to our large Latino community to understand the extent of the separation between Federal and local law enforcement. It is the job of our local police departments to enforce local law and to provide protection to everyone, without regard to immigration status. Conversely, it is the job of the Federal Immigration and Customs Enforcement Agency (I.C.E.) to apprehend and deport individuals who are here illegally. These are separate functions which are carried out by separate agencies.

The purpose of this report is to verify that the separation exists and to explain what this means to the citizens of Sonoma County.

Format

The form of this report is different from other reports in the 2007-2008 Grand Jury Report. You will not see a list of findings, required responses, or commendations. You will find a list of important **facts** and the Grand Jury's **Conclusion**. There is also an appendix which includes documents in support of the conclusions. Our purpose here is to provide to the citizens of Sonoma County an independent, comprehensive, and authoritative understanding of the issues.

Reason for Investigation

There is a perception by many in the Latino community that a cop is a cop. They see no difference between a Federal (I.C.E.) officer and a local police officer. Also, it is believed that a local police can and will arrest a person for being undocumented.

The unfortunate consequence of this misconception is that undocumented individuals, their friends, and their families are hesitant to report a crime or ask police for help out of fear of deportation. This fosters criminal activity that hurts all of us.

There is a real and important separation between the Federal (I.C.E.) authorities and county law enforcement. Local police do not enforce immigration law and their cooperation with the I.C.E. is, with the exception of gang activities, substantially limited.

The Sonoma County Grand Jury has investigated and verified the reality and extent of this limitation.

Investigative Procedures

- Review of related Press Democrat articles dated August 26 and November 19, 2007
- Review of The Sonoma County Law Enforcement Chiefs Protocol on Immigration
- Interview with the Sonoma County Sheriff
- Interviews with the Chiefs of Police in five cities in Sonoma County
- Interview with the Sonoma County District Attorney and three senior staff
- Interview with the ACTION Trainer/Community Organizer for St. Joseph's Health System and Nuestra Voz
- Interview with the director of La Luz
- Discussions with several Officers in the Sheriff's Department.

The Facts

- The California Penal Code (834 B) defines the cooperation required of local law enforcement with the INS. (See appendix, item 1.) It should be noted that this law deals with what is required **after** a person is arrested and as such does not require that local law enforcement contact, question, or detain anyone on suspicion of being in the U.S. illegally.
- It is the stated policy of all Sonoma County police agencies and the Sheriff's Department that they will not contact, question or detain anyone solely on the basis of illegal entry. The policy is documented in the Sonoma County Law Enforcement Chiefs Protocol 99-1. (See appendix, item 2.)
- The Sheriff's Department audits jail records to ensure this policy is followed. If a person is found to be incarcerated solely on suspicion of being an undocumented alien, he or she is immediately released.
- Sheriff Cogbill has stated that the Sheriff's Department has no authority to arrest individuals for violation of federal immigration law by being in the U.S. illegally. However, if a person has previously been deported and has reentered the U.S., that reentry is a felony. A Federal warrant, or immigration detainer for the arrest of such an individual, will be honored. (See appendix, item 3.)
- The Sonoma County Sheriff's Department does not check immigration status and does **not** have access to INS computer files or records.
- Conversely, as required by PC 834 B, I.C.E. **does** have access to Sonoma County jail records and can and periodically does check the immigration status of people in county jail. If I.C.E. determines that the detainee may be in the U.S. illegally, it can place a federal hold on the individual. If that is done, the Sheriff's Department must notify I.C.E. before the person is released. Upon notification, I.C.E. must take custody within 48 hours (not including weekends and holidays). If the agency fails to or chooses not to do so, the person is released.
- It has been reported that I.C.E. does not request holds on illegal immigrants who have been arrested for minor offenses. This is apparently a matter of current I.C.E. policy, which can be changed at any time.
- Local police do not conduct or participate with I.C.E. in sweeps. The only exception to this policy is when I.C.E. requests help in "securing a perimeter" or "traffic control" for one of their operations. The Sonoma County Law Enforcement Chiefs Protocol 99-1 (See appendix, item 2) requires specific procedures to be followed before local law enforcement becomes involved in an I.C.E. operation.
- The use of a false document for identification is a felony in California. (See appendix, item 4.) An undocumented person who is suspected of a crime may be asked by an officer to identify himself. If the person offers a fake ID, he or she can be arrested on that basis alone.
- The Office of the District Attorney for Sonoma County does not report the immigration status of any victim or witness to I.C.E. Furthermore, victims, witnesses and complainants are not asked questions about their immigration status. District Attorney Passalacqua and the other members of his office interviewed by the Grand Jury are not aware of any case where a victim or witness was deported as a result of his or her cooperation or testimony in a Sonoma County criminal proceeding.
- It is illegal to intimidate a witness or victim from reporting a crime or cooperating in the prosecution of a crime.

Conclusions

The effective deterrence of crime in our community requires the cooperation of all of its residents, including undocumented immigrants. In order to achieve that common goal, the Sonoma County law enforcement agencies and the District Attorney have adopted policies to isolate themselves from immigration law enforcement. The local policies described in this report are designed to encourage those residents with immigration concerns to participate with law enforcement without fear of being deported. This is especially important in the Latino community, where residents may be hesitant to report domestic violence and neighborhood crime. The Grand Jury has seen tangible evidence that the spirit of that isolation is real. Your local cop is truly not interested in the deportation of people who are not breaking local laws.

A major exception to this policy applies to individuals involved in, or suspected of being involved in, criminal activity. If such a person is an illegal immigrant, the Sheriff's Department will actively engage I.C.E. to take federal custody of that person. The Sonoma County Joint Gang Task Force coordinates with I.C.E. on a routine basis in an effort to suppress illegal gang activity in the county.

The separation between county law enforcement and the I.C.E. is not and probably can never be complete. The clearly limited relationship is beneficial to all of us, including the Latino community.

The Bottom Line:

- **If an illegal immigrant obeys local and state laws, he or she can report crimes and obtain police assistance without fear of I.C.E. involvement. The insulation from I.C.E. for innocent bystanders, complainants, and victims of crimes is not perfect but it is substantial.**
- **Criminal activity by an undocumented individual will dramatically increase the likelihood of deportation. Minor infractions and lesser misdemeanors will produce a small but significant risk. Major crimes and gang involvement will probably result in I.C.E. intervention and possible deportation.**

Appendix

1. California penal code 834b

834b. (a) Every law enforcement agency in California shall fully cooperate with the United States Immigration and Naturalization Service regarding any person who is arrested if he or she is suspected of being present in the United States in violation of federal immigration laws.

(b) With respect to any such person who is arrested, and suspected of being present in the United States in violation of federal immigration laws, every law enforcement agency shall do the following:

(1) Attempt to verify the legal status of such person as a citizen of the United States, an alien lawfully admitted as a permanent resident, an alien lawfully admitted for a temporary period of time or as an alien who is present in the United States in violation of immigration laws. The verification process may include, but shall not be limited to, questioning the person regarding his or her date and place of birth, and entry into the United States, and demanding documentation to indicate his or her legal status.

(2) Notify the person of his or her apparent status as an alien who is present in the United States in violation of federal immigration laws and inform him or her that, apart from any criminal justice proceedings, he or she must either obtain legal status or leave the United States.

(3) Notify the Attorney General of California and the United States Immigration and Naturalization Service of the apparent illegal status and provide any additional information that may be requested by any other public entity.

(c) Any legislative, administrative, or other action by a city, county, or other legally authorized local governmental entity with jurisdictional boundaries, or by a law enforcement agency, to prevent or limit the cooperation required by subdivision (a) is expressly prohibited.

2. Protocol 99-1 Immigration

SONOMA COUNTY LAW ENFORCEMENT CHIEFS' ASSOCIATION

PROTOCOL: 99-1

ADOPTED: 08/06/99

REVISED : 09/02/05

SUBJECT: IMMIGRATION

PURPOSE: To establish a protocol regarding Sonoma County Law Enforcement response to illegal immigrants

I. POLICY

- A. Sonoma County Law Enforcement personnel shall not arrest or detain any person based solely on violation of Title 8, United States Code, Section 1325 (illegal entry).
- B. Sonoma County law enforcement personnel shall not undertake any interrogation of any person for the sole purpose of ascertaining his/her immigrant status.
- C. Sonoma County law enforcement personnel shall not undertake a law enforcement action designed solely to detect the presence of illegal immigrants.
- D. Sonoma County law enforcement personnel may assist the ICE in the investigation of criminal activity involving illegal immigrants, when requested to do so, only after approval of the on-duty Watch Commander/on duty supervisor.
- E. Watch Commanders/on-duty supervisor shall ascertain a mission statement and operational guidelines for all ICE investigations from the ICE agent in charge to determine if it meets policy guidelines prior to approval of assistance from Sonoma County law enforcement.

Appendix, continued

- F. Watch Commanders/on-duty supervisors shall request the name of the ICE agent in charge, and require verbal notification of the results of the individual investigations requiring the assistance of Sonoma County law enforcement

II. PROCEDURES

A. Detention of Illegal Immigrants

1. No person shall be detained solely to ascertain immigrant status.
2. Detention shall be based solely on reasonable suspicion to believe said person has committed a violation of State law or local ordinance or where circumstances require detention for officer safety reasons.

B. Arrest of Illegal Immigrants

In all cases, a written arrest report shall be completed when a person has been arrested for violation of State or local law, regardless of the determination later by ICE that the arrestee is an illegal immigrant.

C. Custody

1. A person determined to be an illegal immigrant by the ICE shall be advised of his/her right to be admitted to bail on the terms and conditions offered to persons arrested for State and local violations.
2. Any illegal immigrant shall be admitted to bail until an ICE hold is placed on the individual by ICE officials. ICE officials may notify detention personnel by telephone of the ICE hold, but must immediately send written confirmation by teletype or fax.
3. Per the Code of Federal Regulations, Section 242.2(a)(4), after an ICE hold has been placed on an individual, the individual shall remain in custody for a period not to exceed 48 hours to permit transfer of custody to ICE. This 48-hour time frame excludes weekend days and federal holidays.

D. Victims and Complainants

1. No questioning shall be directed to a victim or a complainant regarding his/her immigration status.

3. California penal code section 114

- 114** Any person who uses false documents to conceal his or her true citizenship or resident alien status is guilty of a felony, and shall be punished by imprisonment in the state prison for five years or by a fine of twenty-five thousand dollars (\$25,000)

4. Sheriff Cogbill's official statement regarding illegal immigration



Sonoma County Sheriff's Department

*BILL COGBILL
Sheriff-Coroner*

*RICH SWEETING
Assistant Sheriff
Law Enforcement Division*

*LINDA SUVOY
Assistant Sheriff
Detention Division*

September 4, 2007

The following represents the practice of the Sonoma County Sheriff's Department as it relates to illegal immigration.

The Sheriff's Department does not have the resources, expertise or authority to arrest individuals for violation of federal immigration law by being in this country illegally. The fact that an individual is suspected of being an undocumented alien alone shall not be the basis for contact, detention, or arrest. Pursuant to our policy we will not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens. We cannot and will not prevent federal authorities from doing so.

In the interest of public safety the Sheriff's Department will however assist I.C.E. and other federal authorities with the following; the investigation, identification, and detention of illegal immigrants who have been identified as, or suspected of, committing a crime, involved in furthering illegal gang activity or having a criminal warrant or immigration detainer issued for their arrest.

We believe the entire community, including the Latino community, benefits from this type of enforcement as it makes Sonoma County a safer place to live.