

Immigration Working Group
Minutes
November 17, 2008
Jefferson County District Attorney's Office
500 Jefferson County Parkway, Golden, CO

Attendees:

Peter Weir	Ann Terry	Dan Oates
John Suthers	Grayson Robinson	Dan Brennan
Lou Vallario	Kathy Sasak	Terry Maketa
Brenda Leffler	Stephanie Villafuerte	Nancy Todd
Doug Darr	Patricia Medige	Jim Kerr
John Morse	Doyle Eicher	Amber J. Tafoya
Kevin Eldridge	Scott Storey	Steve King
Ari Zavaras	Roxanne Huber	Ron Sloan
Antoinette Salazar	Dave Schultheis	Stan Hilke
Scott Peck for Andrew Romanoff	(Tom Raynes)	

Absent: Dennis Harrison, Troy Eid, Gerald Whitman,

Welcome and Introductions:

Pete Weir began the meeting at 1:22 p.m. Mr. Weir began the meeting by explaining the handouts. The document entitled “Suggestions – Topics for Discussion” includes items taken from literature and found in the public domain.

There will not be an extensive amount of time for discussion. These suggestions are to get a sense of the working group. The final report will contain points in favor of and in opposition to a recommendation.

The suggestions are split into the four areas the Governor asked the working group to look into – law enforcement issues, communications, legislative changes and recommendations for federal action. There are some issues that cross over into more than one category.

Suggestions – Topics for Discussion

Law Enforcement Issues:

1. The capacity for additional 287(g) training for interested local law enforcement authorities should be made available by ICE within a reasonable time to accommodate the needs / interests of Colorado law enforcement.

Discussion:

Is the advantage of 287(g) that it moves people out of jail faster? It allows an agency that comes in contact with an illegal alien involved in an arrestable offense, the ability to process the individual and hand them over to ICE sooner.

There is a public safety aspect to 287(g) authority in the jails. If an illegal alien knows they face a bigger change of being deported because he/she could be sent to a jail that has 287(g) authority, maybe the illegal alien would decide to go somewhere else.

Mr. Suthers suggested a language change: "For those local and state law enforcement agencies that have determined they want to pursue 287(g) powers, that ICE make the training available to them."

Some law enforcement agencies might not want this authority while others may just want the authority in jail. Concern was expressed that if the local law enforcement agency becomes the immigration police, the immigrant community will not cooperate with police when crimes occur in their area.

Will the immigrant community be able to understand who has authority to deport them and who doesn't? That the officer on the street does not have the authority but an officer in the jail might?

a. The federal government should provide supplemental funding for local authorities to assist with the cost of the training, including overtime.

Discussion:

The cost of 287(g) training is born by the federal government. The bigger issue is the supplementation of the staff and the costs associated with this at the local jails. Are you talking about operational overtime or training overtime? Both.

b. ICE should expand its ability to conduct 287(g) training in Colorado, rather than requiring Colorado agencies to send officers out of state.

Discussion: none

c. 287(g) training should be expanded for detentions and enforcement, depending on the request of the Colorado law enforcement agency.

Discussion:

The training is the same for both detentions and enforcement. The difference is a result of the Memorandum of Agreement between the agency and ICE, not the training. The purpose of this recommendation is to expand capacity to offer the training within Colorado.

2. ICE should significantly expand the detention capacity available for Colorado detainees.

Discussion:

This is a complex situation, especially during a time when the Commission on Criminal and Juvenile Justice is trying to find ways to reduce the number of inmates in detention facilities. There is also the concern with unfunded mandates. The existing criteria pushed down from Washington, DC, the inspections, the criteria and the auditors are inadequate, inappropriate and unacceptable.

This statement should be amended to clarify that the federal government should significantly expand the detention capacity available for Colorado detainees. ICE doesn't have enough resources. The 700 beds shared between Colorado and Wyoming are inadequate.

Is the increased detention capacity for just the criminal aliens or does it include the aliens who are in violation of their status? The criminal aliens are going into jail anyway. The expansion of bed space is needed for the non-criminal aliens. The police are found to be in the crosshairs when they try to separate the criminal alien from the non-criminal alien.

Can the statement include the capacity to expand not only the facilities, but the staff as well?

To local law enforcement, whether someone is a criminal alien or an illegal alien is irrelevant. What is relevant is what law the individual violated. More bed space can only help law enforcement by giving them more capacity to make wise choices. Hernandez was arrested several times on misdemeanor charges. ICE wasn't taking misdemeanants. If there are more beds, then maybe things can change.

As more individuals are detained, the more cases come before the Immigration Courts. The more violent offenders are in jail longer while waiting to get to the Immigration Court. The less violent could be released into society using an ankle bracelet type of sentence and keep the more violent ones in jail.

How can we make the federal government follow along with this? We can't. We can forward our recommendations to our congressional delegation.

3. ICE should revisit its policies regarding appropriate standards for local jails to qualify as an ICE detention facility.

Discussion: None.

a. ICE should not impose any more stringent requirements for the housing of illegal aliens than are mandated for the constitutional detention of United States citizens.

Discussion:

What is the rationale for doing this? Law enforcement would be detaining non-criminal aliens who are elderly or children or men and women who are in the country illegally. They are not being held for a criminal violation. These requirements are to protect detainees.

Adams County is not housing children or other non-criminal aliens. It is housing the criminal aliens. If a facility contracts with ICE to house non-criminal aliens, it is up to that entity to establish the policies and procedures of where they hold detainees. There should be a standard on how people are treated, whether they are criminal aliens or non-criminal aliens.

ICE has only two places where they hold families and it does not house juveniles with adults. None of ICE's facilities in Colorado can house juveniles. They use a rating system to decide where people are going to be house.

Are there two areas being discussed - the criminal alien and the non-criminal alien? The criminal aliens are treated like anyone else in a jail. Non-criminal aliens can be held in a long-term holding facility that has a contract with ICE. The conditions are spelled out in the contract.

It should state that criminal aliens are going to be treated like all citizens, in a fair and humane way.

The vote was taken with the understanding that the statement included both the civil (non-criminal aliens) and the criminal aliens.

4. The federal government should fully compensate local authorities for any costs associated with arrestees being detained for ICE (at all stages of a proceeding) including medical, food and housing expenses.

Does this mean after local charges are resolved? After a case has been resolved, ICE has 48 hours in which to pick up the detainee. Arapahoe County has had problems because ICE cannot pick up the

inmates after their local charges have been resolved. Arapahoe County is having difficulty being reimbursed for the expenses incurred.

The vote was taken with the understating that all local charges have been resolved.

- 5. Increasing the number of law enforcement officials with enforcement authority under section 287(g) without a significant increase in detention capacity will not result in a meaningful strategy to ameliorate the problem.**

The law enforcement side can be increased, but if the rest of the infrastructure is not increased as well, the system will crumble. The infrastructure includes building up the number of beds, the staff and courts.

- 6. Law enforcement authorities have a duty to support and defend the constitutional rights of all persons.**

Discussion: none

- a. Officers must build trust with all elements of the community, including immigrants. This engenders respect for the law and promotes the cooperation of victims and witnesses at every stage of an investigation and prosecution.**

Discussion: none

- b. Bias based policing and racial profiling can never be tolerated within the law enforcement community.**

Discussion: none

- 7. The development of a national identification card based on biometric technology such as fingerprints or DNA would be helpful to law enforcement.**

Discussion:

There is no question that it would be helpful to law enforcement. The statement as written is true. The statement is in support of the national identification card

- 8. The Peace Officers' Standards and Training (P.O.S.T.) Board should develop a curriculum and training to assist local police and sheriff's deputies in determining probable cause regarding a person's place or country of origin and immigration status. (as contemplated by Senate Bill 90 and state funding should be provided to accomplish this.)**

Discussion:

Is the state going to fund it? Are we going to distinguish between this and 287(g) training? The 287(g) training is four weeks. The POST training could be a 4 – 8 hour class that could be given to local law enforcement for better understanding of human smuggling.

Can we reference Senate Bill 06-90 in this? The statement should also include that it will be funded. SB 90 is nothing but a reporting mechanism on how many illegal aliens law enforcement is contacting. The statistics being reported under SB 90 may not tell you what is going on. SB 90 is for arrestees only. It will not apply to the family within the van.

The statement will include a reference to SB90. (C.R.S. 29-29-101 et. Seq.)

- a. The federal government should provide funding for this training.**

Strike 8(a)

- 9. Local sheriff and police resources are stretched beyond capacity and cannot absorb additional unfunded mandates to deal with the federal immigration problem.**

Discussion:

This should also pertain to state and local law enforcement agencies. Add that language to the statement. Public policy should prioritize with public safety issues being the first priority and infrastructure the second.

The revised statement should read, "State and local law enforcement resources are stretched beyond capacity and cannot absorb additional unfunded mandates to deal with the federal immigration problem."

- a. Special emphasis should be made by local governments to reprioritizing in their jurisdictions and provide priority to public safety issues as number one.**

10. Tragic and egregious criminal activity perpetrated by a segment of the illegal immigrant community will continue to occur until the national problems of illegal immigration are solved.

This is an important statement to make. There will be additional Hernandez-type cases. It is an acknowledgement that state and local government can only have a limited impact until the immigration issue is taken care of at the federal level. There are 75 current homicide cases in Colorado where the suspect is in Mexico.

For responsible solutions you need to separate driving status from immigration status.

There were several factors that brought the Working Group to the table. How do we identify the systems that are broken? Hernandez could have been here legally and still the crime would have been committed. The public expects law enforcement to prevent these incidents and unless there is drastic reform across the state and through several systems, this will happen again.

Another statement needs to be made that informs the public that for a misdemeanor charge, ICE won't be involved.

Suggested revised language: "Because illegal immigrants are as likely as any other group to commit crimes, tragic and egregious activity by a small segment of the illegal immigrant community will continue to occur in Colorado. The problem of illegal immigrants causing such tragedies will not be adequately addressed until such time as the national problems of illegal immigration are resolved by the federal government."

Can we change the word "adequately to fully?" Yes. The vote was taken.

11. ICE has a national policy of prohibiting its local officials in any jurisdiction, including Colorado, from engaging directly and honestly with the local community and local media about its many challenges in enforcing federal immigration law. This policy should be ended immediately. Public discourse directly with ICE about its capacities and limitations is crucial for Colorado to fully partner with the federal government to solve our immigration problems.

ICE asked that the word "honestly" be stricken. It presumes dishonesty is being done.

The basis for this statement is that ICE cannot participate in any discussion unless cleared by Washington DC. They should be allowed to participate in any discussion involving immigration issues.

Can we write a separate acknowledgement of the fine work that the ICE colleagues are providing in Colorado? The report shall reflect the outstanding work that the local ICE office is doing for state and

local officials. Any concerns that we have with ICE's involvement and participation is not with the Colorado officials, but with the national ICE.

Communication:

- 1. Communication between ICE and local law enforcement, prosecutors and the court is inconsistent regarding detention and deportation (voluntary or otherwise). ICE should not deport any individual with pending state felony charges without consulting with both the arresting agency and the prosecuting attorney.**

Shouldn't the victim also be included in this notification? If an active court case is involved, the victim would be included. What should ICE do with the individual in the interim? The emphasis is that there should be communication with the prosecutor.

This may not be the prosecutor's choice. On the weekend they will be using the bond schedule. There are cases such as DV and sex offenses where there is no bond until the individual sees the judge. Then the discussion about immigration status and the possibility of deportation can be discussed. Can ICE turn an individual back over to a local law enforcement agency if a new bond is set? Yes.

Can we change the word "consulting" with "notifying?" Yes.

- a. If necessary, federal law should be revised to prohibit deportation during the pendency of state felony charges, absent the consent of the prosecutor.**

Discussion;

Isn't done in extradition cases? This would be an example of the federal authorities and local authorities working together.

If the law is changed to reflect the above statement, another law needs to be changed. If an individual cannot be deported until the case is completed, and if the defendant bonds out, ICE has to make sure the individual has the opportunity to work. This would also have to be changed in federal law.

- 2. ICE should report to local law enforcement, prosecutor and the court on the ultimate disposition of any individual against whom ICE has lodged a detainer during a state criminal prosecution or detention.**

Discussion:

Is there a privacy concern on this? As this relates to the Victim's Right's law, the victims have a right to know on the ultimate disposition. Facilities with 287(g) authority may have a good idea on the disposition of the offender. ICE does have a victim notification system, so if a victim of a felony crime can contact ICE, then the victim will be notified of the status of the immigration case. This should also be in the report.

- 3. Additional training by ICE for state and municipal prosecutors, judges, law enforcement and the defense bar would contribute significantly to a more complete understanding of ICE's policies and procedures.**

Discussion:

This should be restated as more of a direction than a statement. "ICE should provide training for state and municipal prosecutors, judges, law enforcement and the defense bar would contribute significantly to a more complete understanding of ICE's policies and procedures."

ICE said they have an outreach program right now. This is available in the Denver area.

- 4. CBI should continue to explore and, when feasible, implement data entry to reflect the birthplace or country of origin of individuals within its database.**

To be discussed November 25, 2008.

- 5. ICE should dedicate additional resources to the IAQ system to expedite inquiries from local law enforcement.**

To be discussed November 25, 2008.

- 6. When submitting an inquiry to the IAQ system, local law enforcement should use the "narrative" field to distinguish case priorities.**

To be discussed November 25, 2008.

- 7. Standards associated with law enforcement access to ICE databases should be significantly adjusted to allow local law enforcement authorities to have additional information regarding citizenship status.**

To be discussed November 25, 2008.

8. Convene Immigration Summit during the 2009 legislative session.

To be discussed November 25, 2008.

Legislative Changes:

- 1. Additional state legislative guidance is needed in determining appropriate sentences and the extent of the court's authority when dealing with illegal immigrants accused or convicted of state crimes.**
 - a. What are appropriate factors to consider when setting a bond?**
 - b. Is someone who is in the country illegally and is convicted of a crime eligible for probation?**
 - c. What is an appropriate sentence for both misdemeanants and felons who are in the country illegally and are convicted of a crime?**

Discussion:

What are appropriate factors when setting a bond? Ties to the community are important when considering a bond. When illegal immigrants are able to post a bond and self-deport, it is a factor to be considered.

Probation - It is a privilege not a right. You cannot sentence an illegal alien to probation. Have to sentence them to DOC or 90/90. If the standard sentence for a crime is probation, and an illegal alien cannot receive probation as his sentence, is that right? The Constitution has a provision for equal justice for all.

In El Paso County, they have a judge who would sentence someone who was going to be deported to probation. After the person was deported, probation was not completed and a warrant was issued.

Will the group endorse additional guidance to the general assembly?

There are two areas of concern: One is the role of deportation as a punishment. The judge is using the likelihood if someone is going to be deported as a factor in the sentencing. Also, there are individuals who have a job. The legislation should not view deportation as a punishment.

- 2. Colorado should enact a "material witness" statute, similar to the federal statute.**
 - a. How long may an individual be detained?**
 - b. Where would the individual be detained?**
 - c. Who pays the cost of detention?**

- d. What due process rights inure to the detainee?**
- e. Is there a right to counsel and, if so, at who's expense?**

Discussion:

How would you limit the scope of the material witness statute? A provision could be added that the material witness statute is to be used in human smuggling or trafficking cases.

There is a material witness statute on the books. The problem is that it only applies once a case has been filed. You need to hold the witnesses as a material witness so you can make the case and file it. The problem is the pre-filing timeframe.

The State Patrol is in favor of a material witness statute. If you want to investigate active smuggling cases, you have to hold material witnesses. You can hold a few witnesses - you don't need to hold all of them.

How many people would this apply to in any given year? How many passengers were picked up last year? CSP said they picked up a couple of hundred in the past few years. You don't need all of them. The prosecutor will decide on how many are needed. The State Patrol did not pursue 15 of their smuggling cases because they could hold the witnesses.

If you could hold the witnesses for an average of 72 hours, the witnesses could be deposited in front of the defendant and then set free.

What is the cost to hold material witnesses? The local jails are not equipped in any way to deal with material witnesses.

The vote was taken on the general premise: Should Colorado enact a material witness statute that would mirror the federal law?

3. Colorado should revise its "human smuggling" law to mirror federal statutes.

Discussion: None

- a. Delete the requirement of proving "thing of value."**

Discussion:

CSP has trouble proving the "thing of value". This statement is not in the federal statute. Caution that giving a ride to a number of people does not make it appear as smuggling.

4. Colorado should revise its “human trafficking” statute to mirror federal statutes.

Discussion:

There are two issues with the federal law that could be corrected if Colorado used it as a template. You have to make sure the statute considers it to be just as serious if you traffick a minor as you do if you traffick an adult. The second issue is what age is considered a minor in federal law?

Clarification on SB 90 was also requested. Illegal aliens shall not be reported to ICE until they are convicted of the charge of Domestic Violence. This is so that the victim and/or defendant are not deported before the conviction. All other illegal aliens are to be reported to ICE upon probable cause. Who does the reporting? The prosecutor?

Discussion deferred until next meeting. Many would like to see the federal statute.

5. Colorado should revise its policies regarding the operation of motor vehicles by illegal aliens.

To be discussed November 25, 2008.

- a. Impose a mandatory, minimum 30 day impound for DUI, DUR and HTO (upon conviction);**

To be discussed November 25, 2008.

- b. Block registration of a vehicle if the individual cannot produce a valid driver’s license;**

To be discussed November 25, 2008.

- c. If a person is driving with a foreign driver’s license that cannot be verified, or without any valid identification, then that constitutes probable cause for an arrest and referral to ICE. (Congressman Tancredo)**

To be discussed November 25, 2008.

- d. Any repeat DUI violator who does not have a valid driver's license or a foreign license that cannot be verified shall be taken into custody and held for up to 72 hours for referral to ICE. (Congressman Tancredo)**

To be discussed November 25, 2008.

- e. Repeal the provision in current law that any foreign driver's license is invalid after 90 days if the person is employed in Colorado. (Congressman Tancredo)**

To be discussed November 25, 2008.

Recommendations for Federal Actions:

- 1. The U.S. Congress needs to examine the complexities of current immigration laws and the impact of these laws on policies and practices.**

To be discussed November 25, 2008.

- 2. The U.S. Congress needs to set policy for the nation regarding the commission of crimes by illegal aliens. (Source: PERF Police Executives Research Forum)**

To be discussed November 25, 2008.

- 3. Congress should adopt the recommendations contained in the Western States' Governors' Association 2006 "Policy Resolution on United States—Mexico Border Security and Illegal Immigration" and Colorado House Joint Resolution 06-1023.**

To be discussed November 25, 2008.

- 4. Congress should appropriate significant additional resources to ICE to implement effective detention, removal and training functions in support of local law enforcement.**

To be discussed November 25, 2008.

- 5. The federal government should provide supplemental funding to Colorado to implement a state “material witness” statute for detention of victims and witnesses.**

To be discussed November 25, 2008.

- 6. The federal government should provide supplemental funding to Colorado to offset the costs of 287(g) training for local law enforcement as well as for overtime and compensation time associated with the training.**

To be discussed November 25, 2008.

Next meeting:

November 25, 2008 from 1:00 – 5:00 at the Jefferson County District Attorney’s Office.

Meeting adjourned at 4:30 p.m.