

# TEXAS IMMIGRATION LAW ENFORCEMENT: *A TOP-LEVEL CITY OFFICIAL'S UPDATE*



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## **A CITY'S ROLE: THE BOTTOM LINE**

Federal immigration enforcement has recently drawn heightened public attention. For city officials, that attention can create political and operational challenges. How should city officials respond to this often-unannounced and polarizing enforcement? Every city has different ideals and risk tolerance, but city officials should typically focus on the following:

1. The city does not control federal immigration policy.
2. Texas law forbids local policies that block certain cooperation with ICE.
3. Police officers retain independent legal authority for stops, searches, arrests, and extended detentions.
4. Jail/detainer issues are legally different from street encounters.
5. City officials should act lawfully, neutrally, consistently, and transparently.

## **LEGAL BASICS**

The federal government controls immigration and removal decisions. This means that Texas cities do not set immigration policy, and they cannot adopt policies that block lawful cooperation with ICE in the ways Texas law requires. Some Texas cities have attempted to adopt policies that would limit their cooperation with ICE. The Texas attorney general has been aggressively enforcing state law against those cities, through at least one lawsuit and multiple threats to withhold significant amounts of law enforcement grant funding (which funding appears to actually be pass-through federal funding administered by the state).

The practical considerations are:

1. A city that adopts a local policy telling police officers to not cooperate with ICE will likely face aggressive enforcement efforts by the State.
2. A police officer cannot stop a person or a vehicle solely to enforce federal immigration law – they still need another lawful basis to perform a stop. An ICE administrative warrant will typically not be sufficient to justify a stop (see discussion below).

Many of the things discussed herein are still active controversies. Thus, any city official should consult with local legal counsel about the status of anything in this paper.

Senate Bill 4 (2017), the Texas Legislature's so-called "sanctuary city" prohibition, enacted Texas Government Code Chapter 752, Subchapter C, which provides that a local entity – which is defined as "the governing body of a municipality" (e.g., mayor or city council) or "an officer or employee" (e.g., city manager, police chief, city attorney, etc.) – may not "adopt, enforce, or endorse a policy under which the entity or department prohibits or materially limits the enforcement of immigration laws [or], as demonstrated by pattern or practice, prohibit or materially limit the enforcement of immigration laws."

The law also states that a city official may not prohibit police and others from inquiring into the immigration status of a person under lawful detention or under arrest and/or working with ICE in various ways to determine immigration status.

The U.S. Court of Appeals for the Fifth Circuit largely upheld S.B. 4 in *City of El Cenizo v. State of Texas*, with one exception. The Court struck down a provision that would have prohibited elected officials from endorsing a policy that would prohibit or materially limit the enforcement of immigration laws. *City of El Cenizo v. State of Texas*, 890 F.3d 164, 184 (5th Cir. 2018). It concluded that the First Amendment protects an elected official's right to speak out on immigration issues.

## **LOCAL LAW ENFORCEMENT**

The Texas Legislature, in S.B. 4, added a provision that the Texas attorney general must defend a local entity in a suit arising from the entity's good-faith compliance with a required immigration detainer request, and the State can bear the resulting expenses, costs, judgments, or settlements if the attorney general is providing that defense. The provision hasn't been tested thus far.

### **On the Street**

Local police are not general-purpose immigration enforcers. A police officer cannot stop a vehicle solely to enforce federal immigration law. In the street, Texas police officers need a lawful Fourth Amendment basis to perform a vehicle stop. Similarly, officers have limitations with regard to acting on an ICE administrative warrant or a detainer request. Administrative warrants are generally a civil immigration document, not a judicial criminal warrant.

In the field, when an officer learns that a lawfully detained person has a detainer request, the officer may contact ICE. An ICE official may generally advise that an agent will or will not be able to respond to the scene in a reasonable amount of time. Absent separate lawful authority, such as a criminal warrant, probable cause for a criminal offense, or delegated authority under a 287(g) agreement (mentioned below), an officer should be cautious about unreasonably extending a detention solely based on any administrative warrant. The U.S. Supreme Court in *Arizona v. United States* opined that detaining someone solely to verify immigration status raises Constitutional concerns. Thus, a routine police encounter that drifts into unreasonable detention – such as when an officer detains a person for an extended period while waiting for an ICE response – could run afoul of the Constitution.

### **In Custody: Arrests, Jail Bookings, and Detainers**

Whereas Texas law gives officers broad discretion in the field in arrest-related decisions, the state is very specific about a police officer's duty to work with federal law enforcement once a person is in custody. Texas Code of Criminal Procedure Article 2A.060 provides that:

- (a) A law enforcement agency that has custody of a person subject to an immigration detainer request issued by United States Immigration and Customs Enforcement shall: (1) comply with, honor, and fulfill any request made in the detainer request provided by the federal government; and (2) inform the person that the person is being held pursuant to an immigration detainer request issued by United States Immigration and Customs Enforcement.
- (b) A law enforcement agency is not required to perform a duty imposed by Subsection (a) with respect to a person who has provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver's license or similar government-issued identification.

ICE describes an immigration detainer as a request that a jail maintain custody for up to 48 hours, excluding weekends and holidays, beyond the time the person otherwise would be released, so ICE can assume custody.

### **Federal Law: Information-Sharing is Broadly Protected**

Two federal laws govern information sharing between state and local governments and the federal government:

1. 8 U.S.C. Section 1373 provides that “a federal, state, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from,

the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” The President issued an executive order in 2025 to prevent “sanctuary jurisdictions” (presumably those that are in violation of Section 1373) from receiving federal funding, but the City of San Francisco and a coalition of other cities obtained an injunction against its enforcement.

2. Section 1644 provides that “no state or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.”

What information is typically shared? ICE’s Secure Communities materials explain that, when fingerprints are run through normal criminal-booking channels, they are checked against DHS immigration databases as well. That means federal visibility often comes through ordinary booking processes, not from a direct communication.

The ICE Law Enforcement Support Center provides immigration-status and identity information to local, state, and federal law-enforcement agencies, and the U.S. Supreme Court referenced that support center in *Arizona*.

### **287(g) Agreements**

A 287(g) agreement is a written agreement under federal law that allows a state or local law-enforcement agency to perform specified immigration-enforcement functions under ICE supervision. The Texas Legislature, in 2025, passed S.B. 8, which enacted Texas Government Code Chapter 753. That law requires the sheriff of each county that operates a jail, or contracts with a private vendor to operate one, to request and enter into an immigration law-enforcement agreement with ICE by December 1, 2026.

A 287(g) agreement is not the same as ordinary cooperation discussed above. It is delegated federal authority, under a written agreement, with training and supervision. City officials should know whether their county sheriff has an agreement, what model it is, and whether or how city operations interact with the county jail process.

### **Duty to Intervene**

Texas Code of Criminal Procedure Article 2B.0251, added as part of recent police reforms, provides that a “peace officer has a duty to intervene to stop or prevent another peace officer from using [excessive] force against a person suspected of committing an offense.” Texas law applies only to peace officers licensed by the State. Whether a local officer can or should intervene with regard to the action of a federal agent is legally complicated and depends on whether the agent was acting within lawful authority and/or the individual city’s police procedures. In most cases, the safer course is to stabilize the situation, document everything, and refer it for proper investigation rather than escalating the encounter.

### **ICE/PRIVATE DETENTION FACILITIES: AN UNDETERMINED QUESTION**

ICE (or private ICE contractors) has begun seeking to purchase existing local warehouses and similar buildings for immigrant detention centers. Some cities have sought to regulate these centers through land use ordinances relating to location, distance from sensitive uses, and other means. The issue with that is most federal property is exempt from many of those regulations. The City of El Paso has proposed various restrictions on detention centers. Another interesting situation arose when the City of Hutchins, Texas – through various means – convinced a warehouse owner not to sell to ICE for a detention facility.

### **LEGAL ADVICE**

Because much of the information above is subject to “live” controversy, every city official should consult with local legal counsel on any issue related to their city’s immigration policy. Nothing contained herein is meant to serve as legal advice.