

Memo



To: Dienna Sabol, Diversity Council; Heidi Welsch, County Administrator; Kevin Torgerson, Olmsted County Sheriff; Sheila Kiscaden, Chair-Olmsted County Board

From: Mark A. Ostrem, Olmsted County Attorney

Date: July 5, 2018

Re: Question Related to ADC Policy: Immigration Holds/Sharing Information with Immigration and Customs Enforcement (ICE)

In all jurisdictions, it is the responsibility of the sheriff to operate the local detention facility. Persons can only be brought to jail where law enforcement has probable cause to believe the person has engaged in conduct that violated the law. In most cases, the criminal conduct must be serious felony or other targeted criminal conduct. It is appropriate to hold persons accused of criminal conduct to protect the public and to insure the detainee will return to court as directed. Further detention or conditions of release must be affirmed by a judge promptly. Law enforcement cannot arrest, and the detention facility cannot hold, any person without probable cause for criminal behavior or a valid court order.

In the 1940's and continuing into the 1960's, the United States entered into international treaties whose purpose was to guarantee the right to counsel and due process for foreign nationals who have been arrested or detained. Specifically, the Vienna Convention on Consular Relations of 1963 (VCCR) is an agreement between more than 170 countries. The VCCR requires that a detention authority advise a foreign national in their custody that the detainee may have his/her consular officer notified of the arrest and the detainee may communicate with a consular officer. Some other bilateral agreements/treaties mandate notification of the consulate even if the detainee elects not to have contact. Mandatory notification pursuant to the additional treaties involves 57 additional countries. In complying with the VCCR, local law enforcement officials help ensure that US citizens who are arrested or detained abroad are afforded the protections of the treaty and the assistance of US government officials.

Adherence to the requirements of the VCCR and other bilateral agreements is mandatory. The Supremacy Clause of the U.S. Constitution, Article VI, Clause 2, specifies that “all treaties made... shall be the supreme law of the land.” State laws or other policies do not eliminate the requirements or obligations of the VCCR. The detention authority must comply with VCCR and advise any foreign national of the right to contact, or in some cases, initiate the contact with the appropriate consulate.

In order to comply with its obligation to advise foreign nationals of their right to speak to the consular officer of the foreign national’s country of origin/citizenship, the Olmsted County Adult Detention Center (ADC) asks all persons being booked into the facility their country of birth. For those persons identifying a country other than the United States, the ADC must determine the appropriate consulate. The only agency that can provide that information is the U.S. Immigration and Customs Enforcement Office (ICE). ICE holds immigration documentation from the detainee’s country of origin/entry. With that information, the ADC can determine the proper consulate and provide the detainee with accurate information for contacting his/her consulate or, in those separate cases, advise the consulate of the detention.

Foreign nationals for whom ICE cannot find immigration documentation present challenges for the ADC’s ability to comply with VCCR or the other treaties. Notwithstanding the lack of documentation, the detainee retains the right to consult with the proper consulate.

The Olmsted County Sheriff does not “honor” Immigration Detainers, Form I-247A. Form I-247A is a request to notify and maintain custody of a removable alien in the custody of the ADC for up to 48 hours beyond the detainee’s scheduled release. Absent a valid Federal Order for Detention, the ADC does not hold detainees beyond their scheduled release.

Finally, it is also significant to bear in mind that the Sheriff, County Attorney and most other elected officials take an Oath of Office to uphold the Constitution of the United States and, in this case, the State of Minnesota. Elected officials may not look the other way. The Sheriff is a member of the Executive Branch of Government. The Sheriff does not make law, the Sheriff is charged with implementing the law. To the extent that laws should be modified, that is the role of the legislative branch. Our system of government relies upon the cooperation of federal, state and local officials. We are all best served through this cooperation, with differences settled in an orderly fashion through the court system.