February 14, 2019

Suffolk Sheriff Errol Toulon
Suffolk County Sheriff Office
100 Center Drive
Riverhead, NY 11901

Nassau Sheriff Vera Fludd
Nassau County Sheriff Office
100 Carman Ave.
East Meadow, NY 11554

Dear Sheriff Toulon and Sheriff Fludd,

We write today with deep concerns over the recent Appellate Division of the New York State Supreme Court ruling that it was unlawful for local authorities to arrest individuals based on Immigration and Customs Enforcement (ICE) detainer requests. The decision in People ex rel. Wells v. DeMarco will have negative local and statewide effects on public safety as well as the development of “sanctuary city” policies. It is critical that Suffolk and Nassau Counties reinstate the policy to respond to all ICE detainers judiciously and maintain ICE’s presence in correctional facilities. Additionally, we urge local law enforcement to enter into lawful 287(g) cooperative agreements with ICE.

In People ex rel. Wells v. DeMarco, Susai Francis, an Indian national living on Long Island overstayed his visa in the 1990s. In 2016, Francis was charged in Suffolk County with misdemeanor criminal contempt for violating a family court order of protection. Then again, in 2017, Francis was arrested in Nassau County for driving under the influence. ICE issued both a detainer and arrest warrant to Nassau County Police Department in an orderly manner pursuant to sections 236 and 287 of the Immigration and Nationality Act (8 USC 1226,1357). The Supreme Court determined that the Suffolk County Sheriff did not have the authority to make the arrest under state statute and the ICE detainer extending Francis’s detention violated the Fourth Amendment without a judicial warrant. This decision also found former Suffolk County Sheriff Vincent DeMarco’s policy, which mandated that local law enforcement comply with ICE detainer requests to hold illegal immigrants with criminal charges for 48 hours, violates state law.

Federal statutes allow States and localities to cooperate with ICE and use detainers to aid federal immigration enforcement efforts when there is probable cause to believe a prisoner is a removable alien. ICE is authorized by Congress to issue administrative immigration warrants, as the agency currently does across the country. In fact, the INA specifically authorizes state and local law enforcement agencies to enter into a partnership under 287(g) agreements with ICE.¹ Furthermore, cooperation with ICE detainers is consistent with New York state law because New York State officers are authorized to make arrests without a warrant for criminal violations of the federal Immigration and Nationality Act.²

¹ 8 U.S.C. § 1357(g)
Since this decision last year, Nassau County officials have undertaken a review of ICE’s presence at the county’s jail in East Meadow and the Suffolk County Sheriff’s Department directed local law enforcement to end the practice of honoring all requested ICE detainers. In 2017, ICE issued nearly 800 detainer requests to the Nassau and Suffolk county sheriffs. From January to mid-April of 2018, ICE found that the New York Police Department and New York Department of Correction collectively ignored 440 detainer notices. Within that short period of time, 40 of those individuals released from custody subsequently committed more crimes and were arrested again. This decision will drastically reverse the progress made on combating gang violence and targeting illegal immigrants who commit serious crimes.

The cooperation ICE receives from other law enforcement agencies is critical to its ability to identify and arrest dangerous aliens residing in our communities. John Sandweg, former Acting Director of ICE in the Obama administration, said this decision “weakens public safety for everyone in the U.S.” and that “there needs to be some level of cooperation that works between sanctuary cities and ICE. Otherwise, nobody wins.” The acting field office director for ICE Enforcement and Removal Operations in New York stated, “Simply put, the politics and rhetoric in this city are putting its own communities at an unnecessary risk.” Without assistance from local law enforcement, ICE will be unable to target criminal illegal aliens in Long Island.

Another case pending in the U.S. District Court for the Eastern District of New York, Orellana Castaneda v. County of Suffolk, will present similar questions about the legality of holding individuals in response to ICE detainers. This decision by the Appellate Division of New York State Supreme Court will set a dangerous precedent for sanctuary jurisdictions to legally deny compliance with ICE officials. Sanctuary policies that allow criminal illegal immigrants to evade justice should be denounced. That is why we ask that Suffolk and Nassau County honor all ICE detainer requests to prevent individuals who have committed crimes from being released into local communities where it would be more difficult for ICE to take custody of them. We encourage local correctional facilities to provide adequate notification of criminal alien releases to ICE and engage in 287(g) cooperative agreements in order to improve communication between local law enforcement and ICE. At a time when immigration is at the forefront of national debate, we cannot waver on our duty to protect the citizens in our community.

Sincerely,

Lee Zeldin
Member of Congress

Peter King
Member of Congress

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