

10 Reasons Not to Sign a Basic Ordering Agreement (BOA)

Enforcing immigration law is not local law enforcement's job. There is no law that requires counties to enforce immigration law. On the contrary, counties are largely forbidden from doing so. Local law enforcement is authorized to enforce only state criminal law. Immigration is federal civil law. Local law enforcement cannot arrest someone simply for being undocumented.

Counties do not have to become Immigration and Customs Enforcement's (ICE) force multipliers. Courts have held, and ICE has admitted, that immigration detainees are not mandatory. Immigration detainees are merely requests from ICE, wherein ICE asks local law enforcement to hold someone for 48 hours beyond the time that local law enforcement is authorized by law to do so in order for ICE to come and pick them up.

There is no lawful way to jail someone pursuant to an immigration detainer. Any county that says yes to ICE's unlawful request and holds someone pursuant to an immigration detainer is choosing to violate the constitution. When counties re-arrest someone for ICE they are keeping people in jail without probable cause of a crime, in violation of the Fourth Amendment to the constitution. Several courts have found that carrying out these detainees and holding individuals in this way is illegal and violates the Fourth Amendment.

BOA counties and all counties holding people pursuant to ICE detainees are spending their constituents' tax dollars for unlawful purposes. Housing and feeding the people counties are unconstitutionally incarcerating for ICE costs taxpayers a lot of money. In 2014, one day in jail cost taxpayers in Florida \$64.38.¹

¹ This cost has likely gone up in the past four years. But ICE pays only \$50 for up to 48 hours of jail time, approximately \$25 a day. Every day a county holds someone for ICE is a day that county is losing money.

Nationwide, many counties have been required to pay large sums of money to people they have illegally jailed on ICE detainees. Counties that have been recently sued for holding people in this way have had to pay between \$15,000 and \$350,000 each in damages and settlement costs. The average amount paid was around \$95,339.

Florida sheriffs know that detainees are not lawful. Sheriff Gualtieri of Pinellas County acknowledged this in an email sent to all members of the Florida Sheriffs Association. He also stated he was working with ICE to find a constitutional workaround: Basic Ordering Agreements.

Entering into a BOA with ICE does not let counties off the hook if they hold people in jail for ICE. The Southern Poverty Law Center and the ACLU are currently suing Monroe County for its unlawful detention of a U.S. citizen at ICE's request. Monroe County's BOA will not protect it from liability for its illegal actions.

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Counties should not risk a lawsuit over a practice its elected officials know is illegal.

Refusing to collaborate with ICE keeps communities safer, particularly people experiencing domestic violence who may otherwise be forced to choose between deportation and seeking safety from their abuser.

Counties have an obligation to their residents, not ICE. No county in Florida has the duty to help ICE and CBP find and deport people. Floridians deserve to live in counties where no one is too afraid of deportation to call the police and where taxpayer dollars are used to better the community.

¹ See 2014 Annual Jail Capacity Survey, Florida Department of Corrections and Florida Legislature's Office of Economic and Demographic Research, available at <http://www.dc.state.fl.us/pub/jails/2014/2014AnnualJailCapacitySurvey.pdf>.