

Students, Federal Memo Complicate "Sanctuary Cities"

- by Julian Aguilar
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A key Republican figure in the state's immigration debate says he has concerns about what the proposed "sanctuary cities" bill means for students brought to the country illegally as children, who are now excelling in their studies.

Meanwhile, an Immigration and Customs Enforcement directive authorizing agents to use "discretion" when choosing whom to deport has caused more stir among lawmakers and advocates over what to do with immigrants detained but not arrested under the pending legislation.

Two bills, SB9 by state Sen. Tommy Williams, R-The Woodlands, and HB9 by state Rep. Burt Solomons, R-Carrollton, would prevent local governments and law enforcement agencies from enacting policies that prohibit officers or other employees from questioning the immigration status of a person arrested or lawfully detained.

On Monday, state Rep. Byron Cook, R-Corsicana, the chairman of the House State Affairs Committee, oversaw a public hearing where dozens of students gave testimony, some through tear-choked sobs, admitting they were illegal immigrants. They included Karla Resendiz, who recently graduated with honors with a pharmacy degree from the University of Texas at Austin. She pleaded to the committee to reconsider passing the bill out of committee.

Later, Cook said he had concerns over what the bill could mean for people like Resendiz.

"I've stated on numerous occasions that I have a soft spot for young people, so I am trying to understand how what we do may affect them," he said Tuesday. "Most of them [who testified] appear to be terrific students, and they go off and they do extremely well in college... And what happens to them? Are they ever going to be able to secure a driver's license or not? Are they going to be gainfully employed here in the U.S. or not?" (A portion of SB9 also mandates that applicants for driver's licenses or IDs prove they are in the country legally.)

Asked if he would still support the measure despite his concerns, Cook demurred.

"I think we are trying to be very thoughtful in this whole process. There remains legitimate issues we are trying to work through," he said.

The red flag for opponents of the measure is the "lawfully detained" language that some say casts too wide a net and allows officers to ask a person's status for minor infractions, including traffic violations.

Cook and his colleagues say the language intends for people who have committed crimes — or are thought to have committed crimes — to be lawfully detained. But Williams said during the Senate debate on the bill that "lawfully detained" could extend to even people not

detained for alleged violations, but instead held because they are witnesses to crimes or even victims of them. Cook said he didn't anticipate that most officers would abandon their crime-fighting duties to act as immigration agents. But he added that certain "rogue officers" (as defined by opponents of the measures) could see things differently.

"There is no question that that is a possibility," he said.

"Prosecutorial Discretion"

Under a memo sent by Immigration and Customs Enforcement Director John Morton to ICE offices across the country last week, Resendiz and others like her would be subject to different scrutiny if they ever came in to contact with federal officials. The instructions are to use "prosecutorial discretion" when issuing "a notice of detainer" or deciding "whom to detain or release on bond, supervision, personal recognizance, or other conditions."

This "discretion" includes taking into consideration the person's education in this country and whether they have graduated high school and have attended college. ICE officials are also directed to consider whether the illegal immigrant is the child or spouse of a U.S. citizen, if a person's immediate relative has served in the military, if they are a primary caretaker of someone who is ill, and the current conditions in the person's home country, or the circumstances upon their arrival here, specifically if they came as a young child. An illegal immigrant's criminal history and whether they pose a risk to the country's national security will also be considered, as will any history of prior removal. Victims or witnesses of crimes may also be given the consideration.

ICE officials say the move is intended to align with the agency's mission of concentrating its resources on removing violent offenders.

The memo "provides guidance for ICE law enforcement personnel and attorneys... designed to help ICE better focus on meeting the priorities of both the agency and the Secure Communities program to use limited resources to target criminals and those that put public safety at risk," Carl Rusnok, ICE's director of communications for the Central Region in Dallas, wrote in an email.

The directive comes as ICE has drawn a flurry of criticism for deporting minor offenders and in some cases legal residents, whose fingerprints are run through the Secure Communities program to see if they are eligible for removal under federal law.

While some say it's an admission that the Obama administration needs to address the problem of illegal immigration, opponents of SB9 say it could breed more confusion and longer detention for non-offenders.

"Once you detain someone you have to take action on that file. And very few people have the courage to stand up and do the release," said Robert Loughran, a partner with the FosterQuan law firm in Houston. "I have specifically seen cases and worked on cases where the government has been unable to articulate what its concern or danger is, and you cannot get a single officer to put a signature on a release."

That “limbo” says, Loughran, could lead to non-offenders and even witnesses to crimes being held for weeks or even years, which could also swell jail populations and cost cities and counties millions of dollars a year in detention costs.

“Lawfully Detained”

Concerns have also been raised over what’s not in the House and Senate bills: what to do with someone detained and thought to be in the country illegally, but not arrested and charged.

“ICE’s recent announcement about fine tuning the Secure Communities program to deport the most serious violators is yet another reason why law enforcement officials such as Harris County Sheriff Adrian Garcia continue to seek clarity from the Legislature about the intent and the reality of SB9,” said Alan Bernstein, a spokesman for that department. “If ICE, in its refreshed system of priorities, is not going to have the resources to come out to a traffic stop in rush hour and detain someone solely because of their immigration status... then this agency wonders what the use of the law would be.” Bernstein emphasized, however, that the agency is not against the bill, and its current practices would not violate its provisions if it passes.

Asked about ICE’s policy on illegal immigrants officially detained but not arrested, Crusnok said: “ICE field agents and officers must handle situations on a case-by-case basis, and based on many factors, including, but not limited to, the available operational resources. However, it must be emphasized that ICE is focused on sensible, effective immigration enforcement that prioritizes efforts first on those serious criminal aliens who present the greatest risk to the security of our communities, not sweeps or raids to target undocumented immigrants indiscriminately.”

SB9 and HB9 were left pending in this week’s committee hearing following more than nine hours of testimony. A decision on whether the bill advances could come Friday, when the committee meets to take up pending business. The special session ends on Wednesday.