



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

OCT - 6 2020

RICK WARREN
COURT CLERK

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CV-2020-2065

OKLAHOMA SECOND AMENDMENT)
ASSOCIATION, an Oklahoma entity;)
COUNTY COMMISSIONER KEVIN CALVEY;)
and TOM VINEYARD, an individual,)
Petitioners,)
)
v.)
)
The OKLAHOMA COUNTY CRIMINAL JUSTICE)
AUTHORITY, in its official capacity only; and)
ATTORNEY GENERAL MICHAEL HUNTER, in his)
official capacity only,)
)
Respondents.)

FIRST AMENDED PETITION FOR DECLARATORY JUDGMENT

COME NOW the Petitioners, the Oklahoma Second Amendment Association (“OK2A”), Kevin Calvey, District 3 County Commissioner for Oklahoma County (hereinafter “Calvey”), and Tom Vineyard, and pray that this Court issue a declaratory judgment that the County policy regarding the federal Immigration and Customs Enforcement agency (hereinafter “ICE”) enacted by a majority of the Board of County Commissioners of the Oklahoma County (hereinafter “BOCC”) on October 5, 2020, is both enforceable under state law and is binding on the Oklahoma Criminal Justice Authority (hereinafter the “OCCJA”). Specifically, Petitioners seek a declaratory judgment that 1) Oklahoma is not a “sanctuary state” like California, i.e. that Oklahoma state law allows the operator of a jail or prison to keep in custody an inmate pursuant to a “detainer” issued by ICE for up to 48 hours, even if there is no other legal reason to keep that inmate in custody; and 2) that the policy enacted by the BOCC October 5 is binding on the OCCJA, pursuant to the Lease Agreement between the BOCC and the OCCJA, or by other means. In support of

their Motion, Petitioners allege and state as follows:

FACTS AND ARGUMENT

1. Petitioner Oklahoma Second Amendment Association (“OK2A”) is an entity organized pursuant to the laws of the State of Oklahoma, and is domiciled in Oklahoma County. As such OK2A has an interest in seeing the laws of Oklahoma and the United States regarding law enforcement to be interpreted appropriately. OK2A thus has standing to seek a declaratory judgment pursuant to 12 O.S. 1651 *et seq.* regarding operations at the Jail.
2. Petitioner Kevin Calvey (hereinafter “Calvey”) is the duly elected Commissioner for Oklahoma County District 3, and as such is a voting member of the beneficiary of Respondent Oklahoma County Criminal Justice Authority. Calvey thus has standing to seek a declaratory judgment pursuant to 12 O.S. 1651 *et seq.* regarding operations at the Jail.
3. Petitioner Tom Vineyard is a resident and taxpayer of Oklahoma County, and has an interest in seeing the laws of Oklahoma and the United States regarding law enforcement to be interpreted appropriately. Vineyard thus has standing to seek a declaratory judgment pursuant to 12 O.S. 1651 *et seq.* regarding operations at the Jail.
4. Respondent Oklahoma County Criminal Justice Authority (hereinafter the “OCCJA”), also known as the Jail Trust, is a public trust established in 2019 by a unanimous vote of the Board of County Commissioners of Oklahoma County (hereinafter the “BOCC”), of which Oklahoma County is the sole beneficiary. The OCCJA is the lessee in a Lease Agreement to which the BOCC is the lessor, in which the OCCJA is granted the ability to operate the Oklahoma County Detention Center (hereinafter the “Jail”), subject to certain

conditions. The OCCJA is a named Respondent in its individual capacity only, and this action is not intended to be hostile to the OCCJA.

5. Respondent Michael Hunter (hereinafter "AG Hunter") is the duly elected Attorney General of the State of Oklahoma. As such, AG Hunter is entitled to notice of actions involving the interpretation of state law, such as this action. AG Hunter may be called upon to defend the state in its interpretation of the law. AG Hunter is named in his official capacity only, and this action is not intended to be hostile to AG Hunter.
6. Jurisdiction and venue are proper in Oklahoma County pursuant to 12 O.S. 1653.
7. The Immigration and Customs Enforcement Agency ("ICE"), is the agency of the federal government charged with enforcing our nation's immigration laws.
8. ICE issues "detainers" on inmates at jails and prisons across the country, which request that the jailer or warden continue to "hold" an inmate in the US illegally for up to 48 hours after the inmate would otherwise be released.
9. An ICE detainer is evidence that ICE believes the inmate for whom the ICE detainer was issued is in the US illegally.
10. To be in the US illegally is a public offense under federal law, 8 USC 1325. Specifically, 8 USC 1325(a) reads,

**(a) IMPROPER TIME OR PLACE; AVOIDANCE OF EXAMINATION OR INSPECTION;
MISREPRESENTATION AND CONCEALMENT OF FACTS**

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

11. Therefore, issuance of an ICE detainer constitutes probable cause that the inmate for whom the ICE detainer was issued has committed a public offense, the offense of being in the US illegally, in violation of 8 USC 1325(a).
12. An ICE detainer means that ICE intends to pick up the inmate for further disposition, whether deportation or criminal charges. An ICE detainer does NOT mean that ICE will NOT file criminal charges.
13. To the best of Petitioners' knowledge, most counties in Oklahoma comply with 48-hour ICE detainers.
14. A jurisdiction which refuses to honor or comply with 48-hour ICE detainers is what is popularly known as a "sanctuary" jurisdiction regarding illegal aliens. Examples of sanctuary jurisdictions are the state of California, and cities like New York, Seattle, and Portland.
15. Oklahoma is NOT a sanctuary state. It is legal for a jail operator in Oklahoma to honor and comply with 48-hour ICE detainers.
16. On October 5, 2020, the BOCC enacted "an Oklahoma County policy to fully cooperate with the personnel and contractors of the federal Immigration and Customs Enforcement Agency (ICE), to allow full ICE access to the Oklahoma County Detention Center, and to honor 48-hour ICE detainers on persons in the Oklahoma County Detention Center."

FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT THAT OKLAHOMA IS NOT A "SANCTUARY STATE" FOR PURPOSES OF HONORING ICE DETAINERS

17. Petitioners adopt and incorporate all prior allegations in this Petition for purposes of this Cause of Action.

18. 22 O.S. 196 provides a situation in which a jailer may keep an inmate in custody without a warrant. 22 O.S. 196 states, in pertinent part, "A peace officer may, without a warrant, arrest a person:

1. For a public offense, committed or attempted in the officer's presence,"

19. An ICE detainer is prima facie evidence that the subject of the detainer is committing a public offense, specifically the offense of being in the US illegally, in violation of 8 USC 1325(a).

20. The public offense of being an illegal alien is being committed and attempted in the peace officer's [jailer's] presence.

21. Therefore, pursuant to 22 O.S. 196, a jailer may keep an inmate in custody who is the subject of an ICE detainer, even without a separate reason to keep that inmate in custody.

22. In short, 22 O.S. 196, combined with 8 USC 1325(a), allows a jail operator to honor ICE detainers.

23. "Sanctuary" policies cause real harm to the citizens of Oklahoma County. For that reason, and because the financial risk of a "sanctuary" policy on other counties who do honor ICE detainers, clarification on the law is critical and urgent. Thus, the BOCC enacted its October 5, 2020 policy, and Petitioners herein seek declaratory judgment that state law DOES allow the operator of a jail, and most specifically the operator of the Oklahoma County Detention Center (Jail), to keep an inmate in custody solely because that inmate is the subject of an ICE detainer.

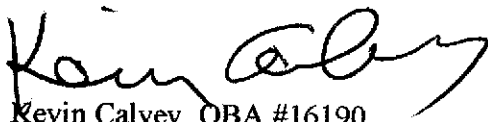
SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT THAT COUNTY POLICIES ARE BINDING ON THE OCCJA

24. Petitioners adopt and incorporate all prior allegations in this Petition for purposes of this Cause of Action.

25. The BOCC's October 5, 2020 policy allows ICE agents to continue to operate in the Jail.
26. State law requires that the operator of a Jail identify all inmates in that jail.
27. ICE agents have operated in the Jail for the purpose of assisting Jail employees with complying with the state law that requires inmates to be identified.
28. If an inmate cannot otherwise be identified, jailers can ask ICE if they can identify the inmate. Without ICE agents in the Jail, this process would involve cumbersome back and forth online communication of photos of inmates, etc, between Jail employees and ICE agents. With ICE agents co-located in the Jail, this process is streamlined, and saves time for Jail employees, thereby saving taxpayers money.
29. Oklahoma County, through the BOCC, continues to own the Jail.
30. Through the Lease Agreement adopted by the OCCJA on June 22, 2020, and by the BOCC (as Lessor) on January 29, 2020, Oklahoma County leased the Jail to the OCCJA, for the OCCJA to operate the Jail, subject to certain conditions.
31. One of the conditions of the Lease Agreement, Article IV, paragraph H, is "Lessee [the OCCJA] hereby covenants and agrees.....That it will comply with all valid acts, rules, and regulations of any *local*, state, or federal body...(Emphasis added).
32. The BOCC policy adopted October 5, 2020, is a valid local policy, which the OCCJA, as Lessee under the Lease Agreement, must comply with.
33. Those opposed to the BOCC's October 5 policy attempted during the BOCC meeting to intimidate Commissioners by shouting out of turn, cursing, and threatening legal action to stop the policy.
34. Wherefore, Petitioners seek a declaratory judgment that the Oklahoma County Criminal Justice Authority is bound to follow the October 5, 2020 BOCC policy about ICE.

WHEREFORE, premises considered, Petitioners request that this Court immediately issue a Declaratory Judgment substantially as follows: "Oklahoma state law permits a jailer to keep in custody the subject of a detainer issued by the federal Immigration and Customs Enforcement Agency (ICE), even without a separate legal reason to keep the inmate in custody. The Oklahoma County Criminal Justice Authority ("OCCJA") is bound to follow the October 5, 2020 policy about ICE enacted by the Board of County Commissioners, to wit: the OCCJA must fully cooperate with the personnel and contractors of the federal Immigration and Customs Enforcement Agency (ICE), allow full ICE access to the Oklahoma County Detention Center, and honor 48-hour ICE detainers on persons in the Oklahoma County Detention Center.

Respectfully submitted,



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