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EDITORIAL: ICE gags sheriff

It was bad enough that federal immigration officials blamed an Arizona sheriff for releasing illegal immigrants when the feds themselves actually had ordered the release. What's worse is that releasing illegals is becoming official policy and the feds have issued a gag order to try to stop the sheriff from telling the public about it.

The spat between controversial Maricopa County Sheriff Joe Arpaio and U.S. Immigration and Customs Enforcement (ICE) surfaced on July 23 and 24 when the sheriff's deputies were ordered by ICE officials to release illegal immigrants who had been caught in a broader criminal sweep. Sheriff Arpaio complained to the media; a federal spokesman claimed the release was the sheriff's fault; and the sheriff then released audiotapes proving that ICE officials, not he, had ordered the release.

Caught looking foolish, ICE officials threatened to withdraw the sheriff's authority to enforce any immigration laws because the sheriff had violated a ban on contacting the media without first obtaining approval from the Department of Homeland Security, which is ICE's parent agency.

Yes, you read that correctly: The sheriff was ordered to shut up. To make it clearer, ICE's principal legal adviser, Peter S. Vincent, wrote to Arpaio attorney Robert Driscoll on July 31 that the sheriff's department, under the terms of its agreement with ICE, must "coordinate with ICE regarding information to be released to the media regarding actions taken under this memorandum of agreement."

To Mr. Driscoll's complaint that the requirement violates the sheriff's First Amendment rights (not to mention the public's right to know), Mr. Vincent replied: "Few courts would consider an obligation to consult with the federal government before releasing information to the media that may

involve sensitive law enforcement issues to be an unreasonable burden on the right to free speech." Furthermore, he wrote, government can "lawfully" require "the surrender of a constitutional right ... provided the conditions are reasonable."

Free speech should not be curtailed so easily. It's also far from clear what "sensitive law enforcement information issues" are at stake when a sheriff merely wants to tell his constituents that illegals have been freed.

This all begs the question why the illegals were released in the first place. Under the existing memorandum of agreement, the sheriff may interrogate and arrest "any alien or person believed to be an alien." However, the Obama administration wants to update such memorandums with new language requiring that "to exercise such authority, [local law enforcement] must first obtain approval from an ICE supervisor, who will approve the exercise only to further the priorities of removing serious criminals, gang members, smugglers and traffickers. ..."

That doesn't make sense. Even if operations should "focus" on dangerous criminals, that should not mean that so-called non-dangerous illegals ought to be let go when they are apprehended.

Mr. Driscoll notes that Homeland Security Assistant Secretary for ICE John Morton on July 10 "personally called Sheriff Arpaio to assure him that the existing [memorandum of] agreement would continue for 90 days." In other words, the old policy -- the one allowing the sheriff to apprehend even non-dangerous illegals -- was still in effect when ICE ordered the release of 13 illegals on July 23 and 24. ICE not only was enforcing a nonsensical new policy, but also was enforcing that policy before the agreement officially had taken effect.

Even apart from the brouhaha with Mr. Arpaio, the Obama administration should throw out the new policy and stick with the old one -- minus the unconstitutional gag order that keeps vital information from the local public.