# Setting the Record Straight On Local Involvement in Federal Civil Immigration Enforcement: The Facts and The Laws

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The New York State Office of the Attorney General
The Office of the Attorney General of California
The Office of the Attorney General for the District of Columbia
The State of Oregon Office of the Attorney General
The State of Rhode Island Office of the Attorney General
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This report was authored by the Civil Rights Bureau of the New York State Office of the Attorney General in consultation with the offices of the Attorneys General of California, the District of Columbia, Oregon, Rhode Island, and Washington.

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# EXECUTIVE SUMMARY

The Attorneys General of New York, California, the District of Columbia, Oregon, Rhode Island, and Washington have prepared this report to respond to threats of funding cutoffs and inaccurate statements by the federal administration concerning the involvement of state and local law enforcement agencies ("LEAs") in federal civil immigration enforcement. The report explains:

- The federal administration's recent reports and accompanying statements regarding U.S. Immigration and Customs Enforcement ("ICE") requests to LEAs to detain individuals for civil immigration violations disseminated misinformation and created an inaccurate and misleading picture of LEA activities.

- LEAs that elect to limit their involvement in civil immigration enforcement are acting lawfully and potentially shielding their jurisdictions from legal liability. Federal law does not compel state and local governments and LEAs to participate in federal civil immigration functions. Nor could it under the Tenth Amendment to the United States Constitution. Moreover, LEAs that decline to detain individuals pursuant to ICE detainer requests do not, on that basis, violate 8 U.S.C. § 1373, a limited information-sharing statute that serves as one of the federal administration's stated reasons for cutting off federal funding to a jurisdiction.

- By its current policy, the federal administration is placing state and local LEAs in an impossible position. On the one hand, an LEA that declines an ICE detainer request risks being designated a "sanctuary jurisdiction" and losing federal funds to protect public safety and ensure other needed services. On the other hand, an LEA that holds a person in custody solely on the basis of an ICE detainer request that is legally insufficient may risk having a court find that the LEA violated the U.S. Constitution or state law, thereby exposing the locality to monetary damages in civil lawsuits.

- Lawfully limiting LEA involvement in federal civil immigration functions can enhance public safety, including by enabling LEAs to focus their limited resources on combatting serious and violent crime in the communities they serve, and by facilitating greater community cooperation with the justice system. Testimonials and data provided in the report refute the federal administration's recent assertions to the contrary. These jurisdictions take appropriate steps to ensure that dangerous individuals are not returned to the community.

- State and local LEAs, including those that limit involvement in federal civil immigration functions, routinely partner with federal law enforcement agencies, including ICE, to promote public safety. Such activities include participation in joint federal-LEA task forces and criminal investigations.

- Our system of federalism gives state and local governments and LEAs substantial autonomy to formulate policies and practices to protect their communities,

including how to expend limited taxpayer resources on law enforcement activities. The undersigned Attorneys General understand that in communities with significant immigrant populations, there are legitimate reasons why LEAs may choose to lawfully limit their involvement in federal civil immigration enforcement. This report provides critical information in support of the proposition that state and local LEAs can and should exercise their discretion and best judgment in the area of civil immigration enforcement in order to enhance public safety.

# INTRODUCTION

Every day, state and local governments and law enforcement agencies ("LEAs") across the country make critical decisions about how they can best serve and protect their communities. LEAs must consider multiple factors—including the needs and demographics of the community, the patterns and types of criminal activity faced by the community, and what state laws require and permit—to determine law enforcement priorities. One important choice in this calculus is the extent to which an LEA participates in federal civil immigration functions. Currently, more than 400 jurisdictions throughout the United States, many with significant immigrant populations, have laws or policies that lawfully limit LEA involvement in federal civil immigration enforcement.[1] Given their experience and first-hand knowledge of their communities, many of these states and localities have concluded that "[g]reater local involvement in immigration enforcement [causes] community members to mistrust the police and result[s] in a decrease in cooperation, hindering the ability of local law enforcement agencies to keep their communities safe."[2]

Recently, the federal administration has criticized a number of jurisdictions for lawfully exercising their discretion to decline certain requests issued by U.S. Immigration and Customs Enforcement ("ICE"). These requests—known as ICE detainer requests—ask LEAs to hold named individuals in custody beyond the time when they otherwise would have been released by the LEAs. The Attorney General of the United States has wrongly accused LEAs that decline to hold individuals in custody solely pursuant to an ICE detainer request of "willfully violat[ing] federal law" and "threaten[ing] public safety."[3] The facts, however, show otherwise. Contrary to the federal administration's assertions, jurisdictions that decline to hold individuals solely pursuant to ICE detainer requests do not violate any laws. And, by limiting their involvement in immigration functions and focusing their limited time and resources on combatting serious and dangerous crimes, LEAs in many communities *enhance* public safety.

On January 25, 2017, the President signed Executive Order 13768, titled "Enhancing Public Safety in the Interior of the United States" (the "Executive Order").[4] The Executive Order grants authority to the Secretary of Homeland Security ("DHS Secretary") to designate, "in his discretion and to the extent consistent with law," a jurisdiction as a "sanctuary jurisdiction."[5] The Executive Order deems those states and localities that "willfully refuse to comply with 8 U.S.C. § 1373"—a federal statute that prohibits restrictions on sharing citizenship and immigration status information with federal immigration enforcement authorities—to be "sanctuary jurisdictions."[6] The Executive Order also suggests that jurisdictions that do not comply with ICE detainer requests may be designated as "sanctuary jurisdictions."[7] The Executive Order directs the Attorney General of the United States and the DHS Secretary to ensure that designated "sanctuary jurisdictions" are not eligible to receive at least some, and perhaps all, federal grants.[8] In addition, the Executive Order directs the Attorney General of the United States to take "appropriate enforcement action" against any state or locality that violates the federal information-sharing law "or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law."[9]

To date, at least six jurisdictions have challenged the constitutionality of the Executive

Order.[10] On April 25, 2017, in a case brought by the counties of San Francisco and Santa Clara, California, the U.S. District Court for the Northern District of California issued a nationwide preliminary injunction enjoining the part of the Executive Order that authorizes federal officials to withhold federal grants from designated "sanctuary jurisdictions" and take other enforcement actions against them.[11] The court found that the threatened enforcement of the Executive Order would deprive the counties of federal grants used to provide critical services to their residents.[12] The court further found that the counties are likely to succeed on their claims that the Executive Order is unconstitutional on multiple grounds, including that it violates:

*Our system of federalism gives state and local governments and LEAs substantial autonomy to formulate policies and practices to protect their communities.*

- Separation of Powers, as the Executive seeks to wield the spending powers that belong exclusively to Congress;[13]
- the Spending Clause, because the Executive Order imposes ambiguous conditions on federal grants after the localities accepted the funds, there is no nexus between civil immigration enforcement and the types of grants at risk, and the amount of federal funding is so large that the threatened de-funding is unduly coercive;[14] and
- the Tenth Amendment to the U.S. Constitution, as the Executive Order attempts to conscript states and local jurisdictions into carrying out federal civil immigration laws and functions.[15]

Another section of the Executive Order—one that is not subject to the nationwide preliminary injunction—directs the DHS Secretary to issue a weekly report listing each jurisdiction that declines to hold an individual in custody in response to a civil detainer request issued by ICE.[16] ICE issued its first such report (the "Weekly Declined Detainer Outcome Report") on March 20, 2017.[17] The report purported to list those jurisdictions that declined to honor ICE detainer requests for the period January 28, 2017 to February 3, 2017, and included the national origin and alleged "notable criminal activity" of the individuals named in the detainer requests.[18] ICE subsequently issued a second report for the period February 4-10, 2017,[19] and a third report for February 11-17, 2017.[20] As described in more detail below, LEAs around the country have identified numerous factual inaccuracies in these reports including, for example, the number of ICE detainer requests received by the LEAs, the number of requests declined, and the descriptions of the LEAs' policies. In fact, the reports were so flawed that on April 10, 2017, the federal administration announced that it was temporarily suspending their publication to allow ICE to "analyze and refine its reporting methodologies."[21]

As noted, the federal administration is enjoined from implementing the funding part of the Executive Order and has also stopped issuing error-filled reports—at least for now. However, the administration has not corrected its false and derogatory statements

about states and localities that lawfully choose to limit their involvement in federal civil immigration enforcement, and it continues to threaten these jurisdictions with the loss of federal funds.[22] The Attorneys General of New York, California, the District of Columbia, Oregon, Rhode Island, Washington issue this report to correct the record and provide the public with the facts about LEAs that choose to limit their participation in federal civil immigration functions as well as an analysis of the laws that allow LEAs to do so.

As the chief law enforcement officers of our respective states, we work with our partner LEAs to promote public safety and protect all individuals, including our most vulnerable neighbors, from harm's way. Armed with years of experience, many state and local LEAs have determined that when any group in their community begins to fear calling the police to report a crime, or testifying in court against dangerous criminals, the entire community is made less safe. A number of jurisdictions have cited these facts in support of their reasoned decisions to limit LEA involvement in federal civil immigration functions—as permitted under federal law—and focus their scarce resources on investigating and stopping serious criminal activity. Such LEAs have demonstrated that these practices can enhance, rather than threaten, public safety in their communities.

This Report is organized into three parts.

**Part I** explains why LEAs that elect to limit involvement in civil immigration enforcement are acting lawfully and potentially shielding their jurisdictions from legal liability. Federal law does not compel state and local governments and LEAs to participate in federal civil immigration functions; as the federal government repeatedly has acknowledged, an LEA's compliance with a detainer request is completely voluntary.[23] Moreover, LEAs that decline to detain individuals pursuant to ICE detainer requests (and associated administrative ICE warrants) do not, on that basis, violate 8 U.S.C. § 1373, one of the Executive Order's stated reasons for cutting off federal funding to a jurisdiction.

*LEAs do not violate any law when they decline to fulfill an ICE detainer request.*

**Part II** provides information—drawn from many state and local law enforcement officers throughout the United States with years of experience protecting communities—that explains how lawfully limiting LEA involvement in federal civil immigration functions can actually enhance public safety. The testimonials and data provided refute the federal administration's recent assertions to the contrary. Part II also describes the many other ways in which state and local LEAs partner with federal law enforcement agencies, including ICE, to promote public safety.

Finally, **Part III** catalogues some of the errors in the federal administration's weekly Declined Detainer Outcome Reports to date, and demonstrates how such reports disseminate misinformation and create an inaccurate and misleading picture of LEA activities.

Our system of federalism gives state and local governments and LEAs substantial autonomy to formulate policies and practices to protect their communities, including how to expend

limited taxpayer resources on law enforcement activities. The undersigned Attorneys General understand that, in communities with significant immigrant populations, there are legitimate reasons why LEAs may choose to lawfully limit their involvement in federal civil immigration enforcement. This report provides critical information in support of the proposition that state and local LEAs can and should exercise their discretion and best judgment in the area of civil immigration enforcement in order to enhance public safety.

# PART I: Jurisdictions That Limit LEA Involvement in Federal Civil Immigration Enforcement Can Do So While Complying with Federal Law

The Attorney General of the United States recently suggested that LEAs that do not hold individuals in custody pursuant to ICE detainer requests "violate federal law."[24] This is incorrect. No federal law requires LEAs to comply with ICE detainer requests. Indeed, federal case law recognizes that LEAs have the discretion to decline to comply with ICE detainer requests. And numerous federal courts have found instances in which LEAs violated the Fourth Amendment to the U.S. Constitution when they held individuals in custody pursuant to legally insufficient ICE detainer requests, thus exposing their jurisdictions to significant financial liability.

## A. ICE detainer requests are voluntary.

An ICE detainer request is a written request submitted to an LEA, asking the LEA to hold an individual beyond the time when the individual is otherwise eligible for release by the LEA so that ICE may take custody of that individual.[25] LEAs do not violate any law when they decline to fulfill an ICE detainer request. As the federal government repeatedly has acknowledged, detainer requests are, in fact, requests and compliance is completely voluntary.[26] An LEA's exercise of its discretion concerning whether to participate in federal civil immigration enforcement therefore does not violate federal law.

The federal government has acknowledged that ICE detainers are voluntary for good reason: attempts by the federal government to compel an LEA to administer a federal immigration function, including fulfilling detainer requests, likely would run afoul of the Tenth Amendment to the U.S. Constitution.[27] The Tenth Amendment limits the federal government's ability to mandate particular action by states and localities, including in the area of federal civil immigration enforcement and investigations. As the U.S. Supreme Court has held, the federal government cannot "compel the States to enact or administer a federal regulatory program"[28] or compel state employees to participate in the administration of a federally enacted regulatory scheme.[29] These Tenth Amendment protections also extend to localities and their employees.[30] Indeed, the U.S. Court of Appeals for the Third Circuit has held that immigration detainers, if viewed as commands to state agencies, would violate the Tenth Amendment.[31] The Executive Order cannot alter this constitutional framework.

Under the Executive Order, states and localities that willfully refuse to comply with 8 U.S.C. § 1373 are deemed "sanctuary jurisdictions."[32] Pursuant to Section 1373, federal, state, and local government entities and officials *may not prohibit or restrict* government entities or officials from:

- sending to, or receiving from, federal immigration authorities "information regarding the *citizenship or immigration status*, lawful or unlawful, of any individual";[33]
- requesting from federal immigration authorities "information regarding the *immigration status*, lawful or unlawful, of any individual";

- maintaining information regarding an individual's "*immigration status*," whether such status is lawful or unlawful; and
- exchanging "with any other Federal, State, or local government entity" information regarding an individual's "*immigration status*," whether such status is lawful or unlawful.[34]

By its plain language, Section 1373 applies only to the sharing of information regarding an individual's "*citizenship or immigration status*."[35] The statute has nothing to do with detention, and LEAs do not violate 8 U.S.C. § 1373 by declining to hold people in custody pursuant to ICE detainer requests.[36]

> *We're not going to seize someone - a human being - unless we have probable cause to do so under criminal law or authority to do so under civil law.*
>
> *- Sheriff Sadie Darnell*

However, according to the Executive Order's terms and recent statements by administration officials, jurisdictions that fully comply with 8 U.S.C. § 1373 but decline to fulfill ICE detainer requests are still at risk of being designated as "sanctuary jurisdictions"—and having the federal administration attempt to withhold federal grants. The Order incorrectly conflates sanctuary jurisdictions with "any jurisdiction that ignored or otherwise failed to honor any detainers,"[37] and directs the Attorney General of the United States to take "appropriate enforcement action" against any state or locality "which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law."[38] The Attorney General of the United States recently suggested that state or local policies to decline detainer requests are "designed to frustrate . . . enforcement of immigration laws."[39] Thus, "the Order appears to proscribe states and local jurisdictions from adopting policies that refuse to honor detainer requests."[40] As noted above, such a federal mandate would likely violate the Tenth Amendment.[41]

### B. Federal courts have held that LEAs may violate the Fourth Amendment when they comply with ICE detainer requests.

All LEAs must comply with the Fourth Amendment to the U.S. Constitution and its prohibition on unreasonable searches and seizures,[42] as well as similar provisions in their respective state constitutions.[43] If an LEA chooses to comply with an ICE detainer request and holds an individual beyond the time when he or she would otherwise be released from local custody, the act of prolonging the period of custody must comply with state and federal law. These include state and federal constitutional protections, most notably the Fourth Amendment's requirement that people not be deprived of their liberty without probable cause.[44]

In accordance with these federal and state constitutional provisions, LEAs are authorized under state laws to arrest and detain an individual suspected of an offense pursuant to a warrant issued by a neutral magistrate, also known as a judicial warrant.[45] An ICE detainer request is not a judicial warrant signed by a neutral magistrate. Rather, it is

a request signed by a federal immigration official.[46] Consistent with federal and state constitutional requirements, state laws limit the circumstances under which an LEA may arrest and detain an individual without a judicial warrant. One of the exceptions to the judicial warrant requirement allows an LEA to arrest and take custody of an individual if the officer has probable cause to believe the individual has committed a separate *criminal* offense.[47] However, the U.S. Supreme Court and other federal courts have held that being removable from the United States is generally a *civil* matter, not a *criminal* offense.[48]

*The federal administration is placing state and local LEAs in an impossible position.*

LEAs may violate the Fourth Amendment by, pursuant to an ICE detainer request, holding an individual in custody beyond the individual's ordinary release date when the LEA has neither a judicial warrant nor probable cause to believe that the individual has committed an independent criminal offense.[49] Detainer requests frequently fail to provide sufficiently detailed and individually particularized information, leaving local authorities unable to determine whether there is probable cause to detain an individual beyond their ordinary release date.[50]

In addition to potentially harming the reputation and effectiveness of the LEA, a judicial finding that an LEA violated the U.S. Constitution by complying with an ICE detainer request that is legally insufficient may result in financial liability. The following table lists examples of recent monetary awards—i.e., judgments or settlements in civil cases—to individuals who claimed that they were held unlawfully pursuant to ICE detainer requests:

| Year | Jurisdiction | Amount | Individuals Detained | Days Detained |
|---|---|---|---|---|
| 2009 | New York, NY[51] | $145,000[52] | 1 | 140 |
| 2010 | Spokane County, WA[53] | $35,000 | 1 | 20 |
| 2011 | Jefferson County, CO / United States of America[54] | $90,000[55] | 1 | 47 |
| 2013 | Orleans Parish, LA[56] | $85,799.36[57] | 2 | 91/164 |
| 2014 | City of Allentown, PA / Lehigh County, PA / United States of America[58] | $145,000[59] | 1 | 3 |
| 2014 | Salt Lake County, UT[60] | $75,000[61] | 1 | 46 |
| 2014 | Arapahoe County, CO[62] | $30,000 | 1 | 3 |
| 2015 | Allegheny County, PA[63] | $25,000 | 1 | 1 |
| 2015 | Los Angeles County, CA[64] | $255,000 | 1 | 89 |
| 2015 | Clackamas County, OR[65] | $127,473.14[66] | 1 | 14 |
| 2017 | San Juan County, NM[67] | $724,000[68] | 193 | Various |

ICE also has erroneously subjected U.S. citizens to ICE detainer requests, as happened in the Allentown, PA[69] and Allegheny County, Pennsylvania[70] cases cited in the chart above. Syracuse University's Transactional Records Access Clearinghouse found that from 2008 to 2012, ICE asked local jails to detain 834 U.S. citizens.[58] ICE statistics from 2009 showed that one particular ICE agent personally issued 77 detainers, 31 of which were later cancelled and only two of which led to an individual being taken into ICE custody.[72] Evidence demonstrated that the cancelled detainer requests indicated that the individual subject was either a United States citizen or a lawful permanent resident.[73] In Boston, ICE officials failed to report statistics about agent-issued detainers as required by a 2007 national policy; after collecting and reporting these statistics in October 2009, reports revealed that agents in the Boston Field Office cancelled roughly two detainers for every three that led to individuals being taken into ICE custody.[74]

> *The reluctance of folks to come forward because they are undocumented and fear deportation is a much greater public safety problem than having people here who may be undocumented but are not committing other crimes.*
>
> *-- Police Chief Thomas Manger*

In 2015, the U.S. Court of Appeals for the First Circuit affirmed a district court's holding that ICE agents were not entitled to qualified immunity for wrongfully detaining a U.S. citizen.[75] The number of U.S. citizens and other individuals legally in the country who are wrongly detained pursuant to inaccurate detainers may increase as the current administration casts a wider net and increases enforcement activities. In March 2017, for example, a U.S. citizen filed a lawsuit alleging that ICE detained him for weeks without bringing him before a neutral magistrate, even though he repeatedly told ICE officials that he was a citizen.[76] ICE errors can only be expected to increase now that it is ICE policy to issue a detainer for every individual whom ICE believes to be a removable immigrant convicted of a crime, no matter how minor the crime.

On March 24, 2017, ICE issued a new detainer request form—the Form I-247A—and a new policy regarding detainer requests to LEAs.[77] However, the new form and policy do not consistently and reliably resolve the Fourth Amendment concerns identified by federal courts in the cases cited above. Like its predecessor forms, the Form I-247A is signed by an immigration official and states that there is probable cause that the named individual *is a removable alien*.[78] Under the new federal policy, one of two "warrants"—the I-200 "Warrant for Arrest of Alien" or the I-205 "Warrant of Removal/Deportation"—must now accompany ICE detainer requests.[79] The I-200 alleges that the individual has committed the *civil violation* of being removable from the United States. The I-205 alleges that the individual is subject to removal/deportation. Like the Form I-247A, the warrants are signed by immigration officials and not by a neutral magistrate,[80] and do not necessarily

cure the constitutional infirmities of previous detainer request procedures identified by the courts.

LEAs throughout the country are aware of their obligations under the federal constitution and state constitutions and laws, and attempt to comply with those obligations. For example, at a recent press conference, members of the Florida Sheriffs Association affirmed their commitment to upholding the law: "We are standing strong from the standpoint of knowing the law and adhering to the constitutional rights," said Sheriff Sadie Darnell of Alachua County Sheriff's Office, which was one of the Florida LEAs listed on an ICE Weekly Declined Detainer Outcome Report. "We're not going to seize someone—a human being—unless we have probable cause to do so under criminal law or authority to do so under civil law."[81] Pinellas County, Florida Sheriff Bob Gaultieri cautioned that the federal government is misleading the public about why LEAs are not honoring ICE detainers: "We're not cooperating the way they want because the courts have told us that we cannot do what they are asking us to do. We have no jurisdiction."[82]

Similarly, the Washington State Sheriffs' Association stated:

> The arbitrary labeling of sheriffs as being "uncooperative" does nothing to serve the purpose of public safety or protect our communities. Sheriffs need to uphold what is legal and what is right and not bend to political pressure or convenience. The public expects us to enforce the law while obeying the law. Sheriffs intend to do just that.
>
> Sheriffs cannot enforce federal civil (non-criminal law). That's why there are federal enforcement officers. Our sheriffs have more than enough to do in dealing with local and state laws in their communities.
>
> What's more, the recent threats from the federal government to withhold federal funding from some agencies will undermine safety in our local communities.[83]

By its current policy, the federal administration is placing state and local LEAs in an impossible position. On the one hand, an LEA that declines a voluntary ICE detainer request risks being designated a "sanctuary jurisdiction" and losing federal funds to protect public safety and ensure other needed services. On the other hand, an LEA that holds a person in custody solely on the basis of an ICE detainer request

*States and cities have a good reason to become sanctuaries while Trump occupies the West Wing: It improves public safety.*

*-- Former Homeland Security official Seth M.M. Stodder*

without a judicial finding or other reliable showing of criminal probable cause to hold the individual—may risk having a court find that the LEA violated the U.S. Constitution or state law, thereby exposing the locality to monetary damages in civil suits.[84] "They're trying to shame local jurisdictions for not doing what is illegal," said King County, Washington Sheriff John Urquhart.[85] Worse yet, when the inevitable lawsuit is filed, past experience shows that the federal government does not come to the local jurisdiction's aid. In fact, ICE officials have argued that any civil liability should be imposed upon the state or local government and not the federal government because it was the state or local LEA that actually held the individual unlawfully.[86]

Seth M.M. Stodder—who served in the Obama administration as assistant secretary of Homeland Security for Border, Immigration and Trade policy, and in the George W. Bush administration as director of policy for U.S. Customs and Border Protection—"had never been particularly sympathetic to the 'sanctuary movement.'" [87] However, the current administration's policies have caused Stodder to rethink his views and he now strongly supports the decisions of states and cities to limit their participation in federal civil immigration functions. As Stoddard has pointed out:

> It's ironic that [Attorney General of the United States] Sessions is threatening to withhold federal funds meant to improve public safety, in order to coerce state and local governments to adopt policies that many local police chiefs believe would in fact *undermine* public safety. This is not right, and it plainly violates the constitutional spirit of federalism. Local officials know their local communities and public safety needs better than anyone—and Washington needs to respect that.[88]

# PART II: Appropriately Limiting Voluntary LEA Involvement in Federal Civil Immigration Enforcement Can Promote Public Safety

State and local governments and LEAs are closer to the communities they serve than the federal government and thus are in a better position to assess the needs of those communities, including how best to use their limited resources to ensure public safety. These assessments include determining how and when to become involved in federal civil immigration enforcement, as permitted by law, and how to build the trust of immigrants in their communities to ensure that victims and witnesses come forward to report crimes.

## A. LEAs can choose to focus their limited resources on combatting crime in the communities they serve.

When LEAs limit involvement in federal civil immigration enforcement, they are making an informed choice that such activities drain scarce resources—including the time and expertise of trained officers—that could otherwise be used to keep their communities safe.[89] The Law Enforcement Immigration Task Force, a group of more than 60 sheriffs, police commissioners, and police chiefs from around the country, has explained that a number of law enforcement officials have determined that they can make the most of their limited resources by focusing on the most serious threats to safety in their communities, and by not participating in civil immigration enforcement:

> Immigration enforcement on the state and local levels diverts limited resources from public safety and undermines trust within immigrant communities. State and local law enforcement agencies face tight budgets and often do not have the capacity or resources to duplicate the federal government's work in enforcing federal immigration laws. Rather than apprehending and removing immigrants who have no criminal background or affiliation and are merely seeking to work or reunite with family, it is more important for state and local law enforcement to focus limited resources and funding on true threats to public safety and security.[90]

Many sheriffs and police chiefs support this prioritization of activities and resources for their communities. For example, Rochester, New York Police Department ("RPD") Chief Michael L. Ciminelli, a 40-year law enforcement veteran, has explained that the RPD does not participate in federal civil immigration functions unless there is a nexus to criminal activity. That way, the RPD is able to focus on the community's priority of reducing gun violence and does not divert scarce resources away from achieving that important objective.[91] Pursuant to a city resolution, RPD officers do not engage in police activities for the sole purpose of enforcing federal immigration laws or policies.[92] The RPD will not inquire about the immigration status of an individual, including a crime victim, a witness, or a person who calls or approaches the police seeking assistance, unless there

is a specific, articulable need to do so to investigate criminal activity.[93] Nor will the RPD detain or turn over to ICE or U.S. Customs and Border Protection a person pursuant to a civil immigration detainer request, or involve itself in civil immigration arrests.[94]

Many LEAs regularly re-examine how best to protect their communities with limited resources. For example, King County, Washington provided data to researchers to assess how ICE detainer requests affected costs to the local government. The data included all inmates released from a King County jail in 2011 who were either charged with a crime or released from jail after prosecutors did not file charges. The assessment found that ICE detainer requests resulted in significantly longer and thus costlier jail stays, failed to primarily target serious criminals, and consumed significant taxpayer resources.[95]

*Counties that limited LEA participation in civil immigration enforcement historically have had lower crime rates and stronger economies than comparable counties.*

As Carl Neusel, Undersheriff of Santa Clara County, California and Interim Chief of Correction, has stated, complying with ICE detainer requests "would strain resources for running [the] jail . . . Any significant addition to the jail population would appreciably increase the burden on the County jail's staffing resources and aging jail facilities. Like other inmates, all ICE detainees would need health care, programs, transportation, security, housing and food. The cost of providing these services is significant and has grown substantially in recent years."[96] Similarly, Southold, New York Police Chief Martin Flatley recently said, "Our department is set up to do basic law enforcement for the Town of Southold and really not to specialize in immigration work . . . . We're leaving that up to the people that are being paid to do immigration work."[97]

### B. Limiting LEA involvement in civil immigration activity can lead to greater community cooperation with the justice system.

Many experienced sheriffs and police officers have found that LEA involvement with federal immigration enforcement drives immigrants in their communities behind closed doors, thereby decreasing the likelihood that crimes will be reported, trials will go forward, and criminals will be prosecuted. Put simply, many LEAs have a sound basis for concluding that their communities are less safe when an immigrant who witnesses a shooting does not call the police, or does not come to court to testify against the accused, for fear that he or she will be detained. It was for that reason that the President's Task Force on 21st Century Policing recommended "decoup[ling] federal immigration enforcement from routine local policing for civil enforcement and nonserious crime," as it "is central to public safety" that "[l]aw enforcement agencies should build relationships based on trust with immigrant communities."[98] Many law enforcement officials have reached this same conclusion about the communities they serve:

- The Law Enforcement Immigration Task Force has explained that "[c]riminals can use the fear of deportation to coerce these immigrants into silence, making our communities less safe for everybody. As victims or witnesses of crime, undocumented immigrants might be afraid to call authorities when criminal activity is happening in their neighborhoods, and might even fear calling an ambulance when someone is sick or injured. For law enforcement officers charged with public safety, this situation creates breeding grounds for criminal enterprises and undermines safe communities."[99]

- The Chief of Police for the City of Richmond, California observed that "community safety is a responsibility for everyone, and not just a job for the police. This requires active, engaged, and empowered neighborhood residents who freely interact with police without reservations."[100]

- San Francisco Police Department ("SFPD") Commander Peter Walsh averred that "[f]ostering trust and confidence between law enforcement and the community is vitally important to SFPD. Without it, residents do not feel comfortable reporting crimes, serving as witnesses, or assisting in investigations, thus harming San Francisco as a whole and making it impossible for SFPD to effectively protect and serve its residents."[101]

- Suffolk County, New York Police Commissioner Timothy Sini recently told a reporter, "the last thing I want is a fearful community. Whether it's fear of criminals or fear of law enforcement. We solve crimes based on people coming to us. It's that simple. If people think they're going to get deported every time they speak to a police officer, it's not helpful."[102]

- Montgomery County, Maryland Police Chief Thomas Manger publicly stated that "[t]he reluctance of folks to come forward because they are undocumented and fear deportation is a much greater public safety problem than having people here who may be undocumented but are not committing other crimes. . . . Criminals thrive in neighborhoods where people don't trust the police. This is a daily struggle for us."[103]

*The cooperation of undocumented victims and witnesses has been crucial to numerous arrests and successful prosecutions.*

- Los Angeles Police Department Chief Charlie Beck explained that "when you create a shadow population . . . that fears any interaction [with law enforcement], then you create a whole population of victims, because they become prey for human predators who extort them or abuse them because they know they won't contact the police."[104]

- New York City Police Commissioner James O'Neill has advised his officers that "[i]t is critical that everyone who comes into contact with the NYPD, regardless of their immigration status, be able to identify themselves or seek assistance without hesitation, anxiety or fear."[105]

- Riverhead, New York Police Chief David Hegermiller publicly stated that his department's policy is not to ask "anyone if they're here legally or illegally. We only deal with people that commit crimes. We're here to protect and serve everyone in the Town of Riverhead and we don't want anyone to be afraid to come to us to report a crime . . . if they feel there's a problem with their immigration status."[106]

- Providence, Rhode Island Public Safety Commissioner Steven M. Pare has expressed that it is counterproductive to require local police to enforce immigration law because it would destroy a fragile trust with the community and in particular, undocumented immigrants who fear reporting crimes. Commissioner Pare explained "[w]e shouldn't be talking about sending police out to enforce these laws," but "we're not going to turn a blind eye to criminal behavior. If there are bad people," these individuals will be targeted for deportation.[107]

- Santa Clara County, California Sheriff Laurie Smith offered a concrete example of the issue. Undocumented farmworkers came forward to provide information during a high profile 2012 investigation of the murder of a teenage girl who disappeared on her way to school. "Had they feared that my office would question their immigration status, or the status of their loved ones, it is very unlikely they would have come forward."[108]

- In a memorandum to his force, Lewis County, Washington Sheriff Rob Snaza stated that to achieve their primary mission to keep the community safe, "we must build confidence so victims and witnesses to crimes come forward to report such criminal activity and/or seek assistance, as needed, without fear of becoming vulnerable to immigration repercussions." The memorandum reiterated that the Sheriff's Office serves all people within Lewis County regardless of their immigration status and noted that all people with whom they come in contact are entitled to the rights and protections of the state constitution and the U.S. Constitution.[109]

Even some past skeptics of so-called "sanctuary policies" are now supporters because such policies can enhance public safety.[110] As former Homeland Security official Seth M.M. Stodder has advised,

> States and cities have a good reason to become sanctuaries while Trump occupies the West Wing: It improves public safety. If local law enforcement were to join the Trump administration in a broad roundup of the undocumented population, it would only drive people underground, making them reluctant to cooperate with the police, report crimes, or serve as witnesses for fear of being deported.[111]

ICE's professed willingness to arrest and deport victims and witnesses participating in criminal proceedings[112] may hinder LEAs and prosecutors seeking to bring to justice

dangerous criminals who are victimizing immigrant communities or whose crimes are witnessed by undocumented immigrants. According to reports, the Executive Order already is having a chilling effect on the willingness of some immigrant victims and witnesses to contact the police and testify in court. The Nassau County, New York District Attorney's Office of Immigrant Affairs runs a tip line for crime victims and would typically receive up to ten calls each week. But since December 2016, it has received no calls.[113] Art Acevedo, chief of the Houston Police Department, reported in April 2017 that the number of Latinos reporting rapes in Houston is down by more than 40 percent this year from the same period last year.[114] The special victims investigations division in Montgomery County, Maryland, which has a significant immigrant population, received approximately one-half the volume of calls for sexual assault and domestic violence this year that it did in the same period last year.[115] In March 2017, the City of Los Angeles, California released data showing that among the city's Latino population, reports to police of sexual assault dropped by 25% and domestic violence reports decreased 10% since the start of 2017 when compared to the same period in 2016.[116] Denver, Colorado City Attorney Kristin Bronson reported that since issuance of the Executive Order, four domestic violence victims have informed her office that they no longer wish to pursue charges against their abusers out of fear that doing so will place them at risk of deportation.[117] The El Paso County, Texas District Attorney similarly reported that a domestic violence victim declined to pursue charges out of fear of deportation.[118]

*LEAs in sanctuary jurisdictions can and do fully cooperate with federal authorities in investigating serious and violent criminal activity.*

A number of jurists are similarly concerned that ICE's increased presence and arrests in courthouses will hinder the justice system's ability to promote public safety. In recent weeks, the chief justices of the highest courts in California, New Jersey, and Washington have written to the Secretary of Homeland Security to urge him to restrict ICE activities in courthouses.[119]

As the Chief Justice of New Jersey commented:

> A true system of justice must have the public's confidence. When individuals fear that they will be arrested for a civil immigration violation if they set foot in a courthouse, serious consequences are likely to follow. Witnesses to violent crimes may decide to stay away from court and remain silent. Victims of domestic violence and other offenses may choose not to testify against their attackers. Children and families in need of court assistance may likewise avoid the courthouse. And defendants in state criminal matters may simply not appear.[120]

### C. Many jurisdictions with LEAs that limit participation in civil immigration enforcement have demonstrated success in enhancing public safety.

To support its policy goals, the current federal administration has made the unsupported claim that jurisdictions that exercise their constitutionally protected discretion to limit participation in civil immigration enforcement are endangering public safety. Evidence demonstrates otherwise. For example, the administration has claimed that cities such as New York City are "crumbling under the weight of illegal immigration and violent crime," as a consequence of their "'soft on crime' stance." [121] However, New York City's murder rate is down almost 47 percent from seven years ago,[122] and crime is at its lowest levels since the New York City Police Department began comprehensively tracking such data a quarter century ago.[123]

Indeed, many cities that have large, vibrant immigrant communities and limit LEA involvement in civil immigration enforcement are becoming safer, not more dangerous. A recent study by the Center for American Progress found that counties that limited LEA participation in civil immigration enforcement had lower crime rates and stronger economies than comparable counties that did not.[124] Another study found that adoption of policies limiting local involvement in immigration enforcement had no effect on public safety.[125] Finally, the Cato Institute has noted that immigrants, including those without legal status, are less likely to engage in criminal conduct than other members of the community.[126]

Moreover, as the examples below demonstrate, the cooperation of undocumented victims and witnesses has been crucial to numerous arrests and successful prosecutions. Such cooperation becomes less likely when immigrants have reason to fear working with police and prosecutors, or are afraid to appear in court to testify:

- In Albuquerque, New Mexico, a 23-year-old Mexican citizen and undocumented immigrant who is married to an American chased down an alleged child abductor and saved a 6-year-old girl.[127]
- Last year, Los Angeles Police Department officers had an encounter with a suspected gang member that resulted in a vehicle chase, a foot pursuit, and shots fired. An undocumented immigrant helped police locate the suspect by providing a description and vehicle information.[128]
- After her 10-year-old daughter was victim to a sex crime in 2012, an undocumented immigrant mother reported the crime to a sheriff's department in California and cooperated in the investigation. The daughter testified against the perpetrator during his preliminary hearing, and the perpetrator was convicted of a violation of California Penal Code Section 288, subdivision (a), Lewd Act on a Child. The daughter has received treatment and has been honored with numerous academic achievement awards.[129]
- A 13-year-old girl was the victim of sexual abuse and rape that resulted in pregnancy in 2016. The girl was terrified to report the rape and abuse, but her mother, an undocumented immigrant, supported and encouraged her to report the crimes

to a sheriff's department in California. As a result of the mother and daughter's cooperation, the abuser was convicted and sentenced to 36 years in prison.[130]

- In 1993, when he was 19 years old, an undocumented immigrant from Mexico witnessed his friend murdered at a party. The man picked the shooter's cousin out of a photo line-up and testified against him in court. However, the shooter remained at large for 17 years—until 2010—when police finally apprehended the man. The undocumented immigrant testified against the shooter, who was convicted of his crimes.[131]
- In 2008, an undocumented immigrant man served as a key witness in the investigation and prosecution of a violent criminal in an attempted murder case. The man was shot by the perpetrator and spent several weeks in the ICU after surgery to the femoral artery in his thigh. He then provided investigators with a first-hand account of the crime and identified the perpetrator in a photo lineup. His recovery period was lengthy due to the bullets lodged in his thigh. Despite being unable to walk fully on his own while he recovered from surgery, the man identified the perpetrator in court and assisted the prosecution at trial. Because of his assistance, the Los Angeles District Attorney's Office secured a conviction on two counts of attempted murder and the perpetrator was sentenced to 19 years in state prison.[132]
- The Baltimore City, Maryland Police Department has received cooperation from undocumented immigrants on a number of criminal investigations:[133]
    - A victim who was cleaning a house was assaulted when the defendant entered the house and struck the victim repeatedly with a wooden baseball bat. The victim's injuries included swelling to the head and arm. The victim reported the incident to the police, gave a statement to the detective, and identified the defendant via a photo line-up. The defendant subsequently entered a guilty plea.
    - A female victim was walking down the street when approached by the defendant, who displayed a white trash bag that appeared to contain a handgun. The defendant robbed the victim of $15.00. The victim immediately sought help and gave a description to police, participated in a pre-trial interview, and maintained contact with the prosecutor assigned to the case throughout the proceedings. The defendant was accused of committing several robberies in the community and the victim's cooperation helped the prosecutor secure a global plea agreement.
    - A female victim residing in a rooming house was assaulted by the defendant, who also rented a room in the house. The defendant forced entry into the victim's locked bedroom door and forced sexual intercourse while holding a knife to the victim's throat. During the forced sexual encounter, the defendant repeatedly bit the victim, who also suffered lacerations to her thighs from the knife. The victim contacted police immediately, gave a recorded statement, sought medical treatment, and cooperated with the prosecution of the defendant.

The examples set forth above are just a few illustrations of how LEAs are able to enhance public safety by limiting their participation in federal civil immigration enforcement and thereby build trust with the immigrant community.

### D. LEAs that limit involvement in federal civil immigration enforcement may still take appropriate steps to ensure that dangerous criminals are not returned to the community.

Contrary to the current administration's statements, LEAs may limit their participation in civil immigration enforcement while taking appropriate measures to cooperate with federal agencies, including ICE, to protect their communities from immigrants who commit serious crimes. This cooperation takes many forms. For example, an important way in which LEAs across the country assist ICE is by sending fingerprints of individuals in LEA custody to the Federal Bureau of Investigation ("FBI"), which in turn provides that information to ICE. ICE then uses the fingerprint information to determine if the LEAs are holding any undocumented individuals.[134] In New York, state law ensures full cooperation with ICE in state correctional facilities, which house those convicted of the most serious crimes.[135] As part of that cooperation, the New York State Department of Corrections and Community Supervision has released more than 14,000 state inmates to ICE custody in recent years.[136] New York even instituted a program that encourages early deportation of those inmates, saving the state more than $150 million since the program's inception.[137] A Washington statute requires state and county correctional facilities to collect immigration information and, for non-citizens, to notify federal immigration authorities of the date and reason for commitment, the length of the sentence, the person's country of citizenship, and the date when the person last entered the United States.[138] Prisons and county jails statewide comply with this requirement. The Declined Detainer Outcome Reports labeled Rhode Island as a jurisdiction with policies that limit cooperation with ICE. However, ICE officials have long been able to directly access the Rhode Island Department of Corrections' computer system, which contains information on every individual taken into custody.[139] If ICE officials determine that a particular inmate in the Department's custody warrants further scrutiny, ICE officials may enter the correctional facility at any time to interview the inmate concerning their immigration status.

> *If ICE truly felt that these offenders were a danger to society, they would establish probable cause and seek an arrest warrant, just like any other law enforcement agency.*
>
> *-- Sheriff Ty Trenary*

Furthermore, LEAs in sanctuary jurisdictions can and do fully cooperate with federal authorities in investigating serious and violent criminal activity. For example, the Rochester, New York Police Department ("RPD") actively participates in no less than seven task forces led by federal law enforcement agencies, including those focused on terrorism, violent crimes, the apprehension of violent criminals, and

narcotics.[140] In fact, through its involvement in the FBI-led Joint Terrorism Task Force, the RPD assisted federal authorities in locating and capturing a suspected terrorist who had planned a New Year Eve's attack at a Rochester bar.[141] The man was ultimately found guilty of conspiring to provide material support to known terrorist group ISIS, and sentenced to 20 years in prison with 50 years of post-release supervision.[142] RPD policy also makes clear that officers may detain and turn over to ICE or CPB a person named in a judicial warrant or federal criminal arrest warrant, and may assist law enforcement officials in making a lawful warrantless arrest for a federal crime.[143] RPD officers also respond to assist CBP or ICE in situations involving an imminent threat to life or safety.[144]

Washington state and local law enforcement officials similarly participate in multiple task forces and criminal investigations with their federal counterparts. For example, the Washington State Patrol and more than 25 local sheriffs and police departments partner with a number of federal agencies—including the Bureau of Alcohol, Tobacco, and Firearms, Drug Enforcement Administration, FBI, Border Patrol, CBP, and U.S. Marshals—to form the Northwest High-Intensity Drug Trafficking Areas (HIDTA). The Northwest HIDTA's mission is to reduce drug trafficking, money laundering, and drug-related violent crimes in seven Washington counties, as well as to reduce demand by supporting treatment and effective demand reduction programs.[145] The Washington State Internet Crimes Against Children (ICAC) Task Force, which is housed in the Seattle Police Department, recently conducted a multi-agency operation to identify individuals who sought to engage in sexual activities with children, which resulted in the arrest of 11 suspects in February 2017.[146] The Vancouver Police Department and Washington State Patrol led the operation, which included participation by the Washington State Attorney General's Office and the FBI.

Other LEAs have had long, productive partnerships with federal law enforcement. That's why Snohomish County, Washington Sheriff Ty Trenary was "baffled as to why my agency would be listed as a county that has a policy of 'non-cooperation' in ICE's first declined detainer report. . . . We have a clear track record of working with ICE when they are conducting a criminal investigation on one of our inmates."[147] Indeed, all members of the Washington State Sheriff's Association support and cooperate with ICE in their efforts to track and deport criminal aliens.[148] As Mark Nelson, Cowlitz County Sheriff and President of the Washington State Sheriffs Association, stated, "[L]et there be no mistake: sheriffs support and cooperate with ICE in their efforts to identify and deport criminal aliens. Preventing crime and holding criminals accountable are key duties to our elected positions."[149]

Additionally, each state's criminal justice system provides protection against dangerous individuals being released back into the community, including procedures to limit bail for, and impose post-conviction sentences of imprisonment on, those determined to be dangerous. These systems are supervised by neutral judges who determine if and when to hold individuals charged with and convicted of crimes.

Thus, contrary to the federal administration's assertions, a number of state and local LEAs utilize many tools—including partnerships with federal law enforcement agencies—to enhance public safety.

# PART III: The Federal Government's Declined Detainer Outcome Reports and Accompanying Statements Were Inaccurate, Incomplete, and Misleading

As directed by the Executive Order, and as part of the federal government's efforts to pressure localities into complying with ICE detainer requests, ICE began issuing "Declined Detainer Outcome Reports" in March 2017.[150] ICE published three reports before the administration temporarily suspended further publication due to the numerous inaccuracies reported by LEAs throughout the United States.[151] The reports to date, as well as the inaccurate statements accompanying their issuance, misled the public about LEAs' level of cooperation with federal officials and contained material inaccuracies about LEAs' practices.

## A. The reports and the administration's public statements ignored LEA cooperation with ICE and viable, constitutional alternatives to ICE detainer requests.

The Declined Detainer Outcome Reports presented an incomplete picture of LEAs' roles by ignoring regular cooperation between LEAs and federal immigration authorities through a host of mechanisms other than compliance with ICE civil detainer requests, as described above in Part II. D. For example, New York State law ensures full cooperation with ICE in state correctional facilities,[152] and New York has a program that encourages early deportation of those inmates.[153]

Moreover, while the federal administration chastised LEAs for not holding individuals in custody pursuant to ICE detainer requests, the administration ignored viable alternatives to such requests that would both satisfy constitutional requirements and achieve ICE's goals. For example, federal law provides that ICE may arrest and detain aliens while awaiting a removal decision under certain circumstances,[154] including arrests without a warrant where ICE has "reason to believe" that the suspected removable alien "is likely to escape before a warrant can be obtained."[155] Thus, if a serious offender is in state custody, ICE, with adequate notice, may take custody of that person when the period of state incarceration ends, without the need for any detainer; if the individual presents a flight risk, ICE may do so without a warrant.

If an LEA declines to fulfill a detainer request—for example, because the documentation provided by ICE is legally insufficient to justify continued custody of an individual—ICE may pursue at least two other routes to obtain legal custody of the individual. ICE may obtain and present a judicial arrest warrant issued by a neutral magistrate. Alternatively, either independently or as part of a cooperative investigation, ICE may assist an LEA in establishing probable cause concerning a criminal offense—including one of many enumerated federal *criminal* immigration offenses.[156] Either scenario might enable an LEA to satisfy its Fourth Amendment obligations and allow ICE to obtain custody of the target individual.

Given these options, ICE's continued reliance on detainers that may not withstand constitutional scrutiny is troubling. As Snohomish County Sheriff Ty Trenary pointed out, "[i]f ICE truly felt that these offenders were a danger to society, they would establish probable cause and seek an arrest warrant, just like any other law enforcement agency."[157]

### B. The reports contained incomplete and inaccurate information.

A number of LEAs have identified problems with the way in which information was presented in the Declined Detainer Outcome Reports released to date, as well as multiple errors in the data.

Section I of each report listed the ICE detainer requests issued throughout the United States for a one-week period, but did not state the number of detainers that were honored, declined, or remained outstanding. The reports also failed to provide any details about the individuals who were the subjects of the ICE detainer requests during that one-week period.[158] Available data establishes that many individuals subject to ICE detainer requests have no criminal record at all, or no record of any significant criminal activity. ICE's own data for available periods shows that nearly 50% of the detainer requests issued were for individuals with *no criminal convictions at all*,[159] while another approximately 30% of detainer requests were issued for individuals with "Level 2" or "Level 3" offenses, as defined by ICE, which generally include property crimes and misdemeanors.[160] ICE's data further demonstrates that detainer requests predominantly target those with no criminal convictions or those with convictions for minor offenses such as traffic offenses and marijuana possession.[161] In the end, fewer than 15% of detainers targeted immigrants who were convicted of serious crimes.[162] Thus, the administration's argument—that LEAs endanger public safety when they refuse to spend scarce resources to detain each individual named in an ICE detainer request—is unsupported by the evidence.

Section II of each report purported to list each individual subject to an ICE detainer who was released by a jurisdiction "that declined detainers during the [relevant] period," along with the individual's alleged notable criminal activity.[163] This ignored the fact that ICE may obtain custody of the individual through alternative means, such as those described in Part III.A above. Moreover, in Section IV of the reports, ICE admitted that the lists included individuals about whom the LEA "may have technically provided notification to ICE in advance of an alien's release," but ICE unilaterally decided that the LEA's notice was not "sufficient."[164] Yet ICE provided no concrete explanation as to what constituted "sufficient advance notification" or why the notice provided was deemed insufficient.

Finally, ICE acknowledged that it "does not document, in a systematically reportable manner, the immigration status of an alien at time of detainer issuance."[165] Thus, the reports failed to demonstrate that, at the time an LEA declined a detainer request, ICE had provided sufficient information to the LEA to establish that the individual listed was removable from the country.

The Declined Detainer Outcome Reports issued to date contained numerous inaccuracies, as detailed further below. But complete verification of the three issued reports and any future reports is impossible because the administration is now refusing to provide the underlying data that historically has been made available. A leading source of ICE-related data—Syracuse University's Transaction Records Access Clearinghouse—reports that ICE has instituted new barriers to data access that make it difficult to evaluate ICE's activities.[166] This includes information that could allow state and local authorities and members of the public to check the accuracy of the reports.

Some of the identified errors in the Declined Detainer Outcome Reports issued to date are set forth below by jurisdiction.

**California**

- According to the first report, the Alameda, California Sheriff's Santa Rita Jail declined an ICE detainer issued in January against a Cambodian citizen who was convicted of a domestic violence charge. But the Alameda County Sheriff disputed this claim. "Just to make sure we're doing our job right, we looked into ICE's detainer list, but we could not find the specific case that corresponded in our records with what ICE listed," said Sgt. Ray Kelly of the Alameda County Sheriff's Office. "When we contacted ICE to do a follow-up, they were unable to provide us with the name of the person, and nothing matching that date and time was in our records."[167]

- Santa Barbara County, California was incorrectly listed in the first detainer report as having received a detainer request for an individual from Mexico who had been convicted of forgery. ICE acknowledged that the individual sought was not in Santa Barbara. But in the following week's report, Santa Barbara was included in the "top ten list" of the highest volume of detainers issued during that time period to jurisdictions which restrict cooperation with ICE. The county sheriff said this was not statistically possible.[168]

**Minnesota**

- The Hennepin County, Minnesota Sheriff's Office called the reports "incorrect in many ways," noting that it had cooperated with ICE requests, including notifying ICE of the imminent release of two undocumented individuals who were transferred into ICE custody.[169]

**New York**

- According to the first report, ICE recently issued nine detainers in Franklin County, New York over a period of six days. Kevin Mulverhill, Franklin County's sheriff, said his jail has not had that many detainers in six years.[170] ICE subsequently acknowledged that Franklin County, New York was erroneously included in the report, which ICE claimed was "due to a data processing error."[171] But ICE again erroneously listed Franklin County, New York in the second report.[172]

- The first report included Nassau County, New York in the "top ten" list of Highest Volume of Detainers Issued to Non-Cooperative Jurisdictions for the relevant time period. But according to the county sheriff and others, the Nassau Sheriff's Department routinely cooperates with ICE on detainers.[173]

- The second and third reports state that New York City will not honor ICE detainers pursuant to a local law. However, the city states that it will detain individuals pursuant to ICE detainer requests if the individual is on the terrorist watch list or has committed a violent crime.[174]

**Pennsylvania**

- The first report stated that three undocumented immigrants in the Philadelphia, Pennsylvania region with serious criminal histories had been released after local officials declined to detain them at the request of immigration agents. But officials in Philadelphia and Chester County were quoted in news media as saying that in two of those three cases, their records did not match the data in the federal report.[175]
    - In one instance, federal officials said Philadelphia declined an April 17, 2015, detainer request for a Jamaican national charged with a crime. But Philadelphia officials said they have no record of a Jamaican national charged with any crime on or around April 17, 2015.
    - ICE said it had submitted a detainer request to Chester County for a person from El Salvador on February 29, 2016, with the detainer declined February 3, 2017. In a subsequent report, ICE acknowledged that this was erroneous.[176]

**Maryland**

- Maryland disputed all three ICE detainer requests that the March 20, 2017 report alleged were declined. The three Maryland jurisdictions referenced in the report—Baltimore County, Montgomery County, and Prince George's County—have reviewed their files and found no record of immigration detainers being issued or denied on the dates identified in the report, leading one county executive to conclude that "[t]he report isn't accurate."[177]

***

ICE has recognized the numerous inaccuracies in the Declined Detainer Outcome Reports to date and suspended publication of further reports to "analyze and refine its reporting methodologies."[178] While this is a positive step, the federal administration's decision to not publicly release data on which the reports are based unnecessarily impedes the public's ability to verify the accuracy of the reports going forward.

# CONCLUSION

Under our system of federalism, state and local jurisdictions have the discretion to make policy choices as to the law enforcement priorities for their communities, including the decision to limit LEA participation in federal civil immigration functions. This report demonstrates that many LEAs throughout the country can and do limit their involvement in civil immigration enforcement in ways that fully comply with federal law and enhance public safety. It is the position of the undersigned Attorneys General that the decision to limit LEA involvement in federal civil immigration enforcement should be left to the informed judgment of these jurisdictions so long as they comply with federal law.

# APPENDIX A

**Law enforcement officers who signed the Brief of *Amici Curiae* Individual Sheriffs and Police Chiefs Supporting Plaintiff ("Sheriffs' Amicus Brief")**
***County of Santa Clara v. Trump*, 17-cv-574 (N.D. Cal.)**

- Chief Art Acevedo, Houston, Texas, Police Department
- Chief Charles Beck, Los Angeles, California, Police Department
- Chief Chris Burbank (retired), Salt Lake City, Utah, Police Department
- Sheriff Jerry Clayton, Washtenaw County, Michigan, Sheriff's Office
- Sheriff Mark Curran, Lake County, Illinois, Sheriff's Office
- Sheriff Tony Estrada, Santa Cruz County, Arizona, Sheriff's Office
- Sheriff Michael Haley (retired), Washoe County, Nevada, Sheriff's Office
- Sheriff Bill McCarthy, Polk County, Iowa, Sheriff's Office
- Sheriff Joe Pelle, Boulder County, Colorado, Sheriff's Office
- Chief Celestino Rivera, Lorain, Ohio, Police Department
- Sheriff John Urquhart, King County, Washington, Sheriff's Office
- Sheriff Lupe Valdez, Dallas County, Texas, Sheriff's Department
- Sheriff Richard Wiles, El Paso County, Texas, Sheriff's Office

# APPENDIX B

**List of the law enforcement officials who have endorsed the Law Enforcement Immigration Task Force Principles**

- Chief Ernest Finley, Montgomery, AL
- Sheriff Derrick Cunningham, Montgomery County, AL
- Chief Lester C. Patrick, Tuskegee, AL
- Chief Hayes Minor, Rogers, AR
- Sheriff Tony Estrada, Santa Cruz County, AZ
- Retired Chief Jack Harris, Phoenix, AZ
- Chief Chris Magnus, Tucson, AZ
- Retired Chief John Meza, Mesa, AZ
- Assistant Chief Michael Soelberg, Mesa, AZ
- Chief Roy Minter, Peoria, AZ
- Chief Silvia Moir, Tempe, AZ
- Retired Chief Roberto Villaseñor, Tucson, AZ
- Chief Charlie Beck, Los Angeles, CA
- Retired Chief James Lopez, Los Angeles County, CA
- Chief David Huerta, Fresno State University, CA
- Sheriff Margaret Mims, Fresno County, CA
- Sheriff Donny Youngblood, Kern County, CA
- Chief Dwight Henninger, Vail, CO
- Sheriff Joe Pelle, Boulder County, CO
- Chief John Mina, Orlando, FL
- Sheriff Michael Chitwood, Volusia County, FL
- Chief William Bones, Boise, ID
- Sheriff Paul Fitzgerald, Story County, IA
- Sheriff Bill McCarthy, Polk County, IA
- Mark Prosser, Public Safety Director, Storm Lake, IA
- Sheriff Lonny Pulkrabek, Johnson County, IA
- Chief Mike Tupper, Marshalltown, IA
- Sheriff Mark Curran, Lake County, IL
- Michael Masters, Senior Vice President, The Soufan Group, Chicago, IL
- Superintendent of Public Safety Benjamin Hunter, Indiana University, Bloomington, IN
- Retired Chief Ron Teachman, South Bend, IN
- Retired Chief James Hawkins, Garden City, KS
- Chief Michael Utz, Garden City, KS
- Chief Gordon Ramsay, Wichita, KS
- Commissioner William Evans, Boston, MA
- Chief Brian Kyes, Chelsea, MA
- Sheriff Peter Koutoujian, Middlesex County, MA
- Chief Tom Manger, Montgomery County, MD

**List of the law enforcement officials who have endorsed the Law Enforcement Immigration Task Force Principles**

- Chief Ron Haddad, Dearborn, MI
- Chief Janeé Harteau, Minneapolis, MN
- Chief Todd Axtell, Saint Paul, MN
- Retired Chief Jose Lopez, Durham, NC
- Commissioner James O'Neill, New York, NY
- Chief Richard Biehl, Dayton, OH
- Chief Eliot Isaac, Cincinnati, OH
- Chief Cel Rivera, Lorain, OH
- Commissioner Richard Ross, Philadelphia, PA
- Commissioner of Public Safety Steven Pare, Providence, RI
- Sheriff Adell Dobey, Edgefield County, SC
- Chief William Holbrook, Columbia, SC
- Chief Jimmy Dixon, Clemson, SC
- Sheriff Leon Lott, Richland County, SC
- Chief Fred Fletcher, Chattanooga, TN
- Chief Art Acevedo, Houston, TX
- Sheriff Edward Gonzalez, Harris County, TX
- Chief Brian Manley, Austin, TX
- Chief William McManus, San Antonio, TX
- Sheriff Lupe Valdez, Dallas County, TX
- Chief Mike Brown, Salt Lake City, UT
- Retired Chief Chris Burbank, Salt Lake City, UT
- Commissioner Keith Squires, Utah Department of Public Safety, UT
- Chief Steve Mylett, Bellevue, WA
- Deputy Chief Carmen Best, Seattle, WA
- Chief Kathleen O'Toole, Seattle, WA
- Sheriff John Urquhart, King County, WA
- Chief Edward Flynn, Milwaukee, WI
- Assistant Chief Randy Gaber, Madison, WI
- Chief Mike Koval, Madison, WI
- Chief Todd Thomas, Appleton, WI
- Chief Andrew Smith, Green Bay, WI
- Chief Dean M. Smith, Oshkosh, WI
- Federal Law Enforcement Officers Association (FLEOA)
- Middle Eastern Law Enforcement Officers Association (MELOA)

# ENDNOTES

1 Brief of Individual Sheriffs and Police Chiefs as *Amici Curiae* Supporting Plaintiff at 1, *County of Santa Clara v. Trump*, No. 17-cv-574-WHO (N.D. Cal. Mar. 22, 2017), ECF No. 65-1 ("Sheriffs' *Amicus* Brief"). *See* Appendix A for a list of the sheriffs and police chiefs who signed the brief.

2 *Id.* at 1.

3 Statement by Att'y Gen. Jeff Sessions on the U.S. Immigration and Customs Enforcement Declined Detainer Outcome Report (Mar. 20, 2017), https://www.justice.gov/opa/pr/statement-attorney-general-jeff-sessions-us-immigration-and-customs-enforcement-declined ("Sessions Declined Detainer Statement"); Jeff Sessions, Att'y Gen., Remarks at White House Press Conference (Mar. 27, 2017), transcript available at https://www.whitehouse.gov/the-press-office/2017/03/27/press-briefing-press-secretary-sean-spicer-3272017-29 ("Sessions White House Press Briefing").

4 Exec. Order No. 13768, 82 Fed Reg. 8799 (Jan. 25, 2017).

5 *Id.* § 9(a).

6 *Id.*; *see also* 8 U.S.C. § 1373 (2015).

7 Exec. Order, *supra* note 4, at § 9(a)-(b). *See also County of Santa Clara v. Trump*, Nos. 17-cv-00574-WHO, 17cv-00485-WHO, 2017 WL 1459081, at *13 (N.D. Cal. Apr. 25, 2017) ("Section 9(b) equates 'sanctuary jurisdictions' with 'any jurisdiction that ignored or otherwise failed to honor any detainers with respect to [aliens that have committed criminal actions].' This language raises the reasonable concern that a state or local government may be designated a sanctuary jurisdiction, and subject to defunding, if it fails to honor ICE detainer requests.")

8 Exec. Order, *supra* note 4, at § 9(a). Neither the Executive Order nor the implementing Department of Homeland Security memorandum lists the grants that the federal government may seek to withhold from "sanctuary jurisdictions." *See* Exec. Order, *supra* note 4; DHS Sec'y John Kelly, Memorandum on Enforcement of the Immigration Laws to Serve the National Interest (Feb. 20, 2017), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf (the "DHS Memorandum"). Indeed, the language of the Executive Order suggests that all federal grants may be targeted. *See* Exec. Order, *supra* note 4, at § 9(a) (stating that "[sanctuary jurisdictions] are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the [DHS] Secretary"); *see also id.* § 9(c) (requiring the Director of the Office of Management and Budget to provide information "on all Federal grant money that currently is received by any sanctuary jurisdiction."); *County of Santa Clara,* 2017 WL 1459081, at *9 ("The Order's structure and language make clear that a 'sanctuary jurisdiction,' which the Secretary will eventually define, should change its policies or risk loss of all federal grants, and Section 9(a) provides the means to do so."). At minimum, the Attorney General of the United States has indicated that he intends to strip jurisdictions that fail to comply with 8 U.S.C. § 1373 of all federal funds granted by the U.S. Department of Justice. *See* Sessions White House Press Briefing, *supra* note 3.

9 Exec. Order, *supra* note 4, at § 9(a).

10 *See City and County of San Francisco v. Trump*, No. 3:17-cv-485 (N.D. Cal. filed Jan. 31, 2017); *County of Santa Clara v. Trump*, No. 3:17-cv-574 (N.D. Cal. filed Feb. 3, 2017); *City of Chelsea v. Trump*, 1:17-cv-10214 (D. Mass. filed Feb. 8, 2017); *City of Richmond v. Trump*, 3:17-cv-1535 (N.D. Cal. filed Mar. 21, 2017); *City of Seattle v. Trump*, 2:17-cv-497 (W.D. Wash. filed Mar. 29, 2017).

11 *County of Santa Clara*, 2017 WL 1459081, at *2, 29.

12 *Id.* at *11.

13 *Id.* at *21-22.

14 *Id.* at *22-23.

15 *Id.* at *23-24. The court also found that the counties were likely to succeed on their claims that the Executive Order is unconstitutionally vague and fails to provide them with procedural due process, in violation of the Fifth Amendment's Due Process Clause. *Id.* at *24-26.

16 Exec. Order, *supra* note 4, at § 9(b).

17 *See* ICE, Weekly Declined Detainer Outcome Report For Recorded Declined Detainers Jan. 28 – Feb. 3, 2017, https://www.ice.gov/doclib/ddor/ddor2017_01-28to02-03.pdf.

18 *Id.*

19 *See* ICE, Weekly Declined Detainer Outcome Report For Recorded Declined Detainers Feb. 4 – 10, 2017, https://www.ice.gov/doclib/ddor/ddor2017_02-04to02-10.pdf.

20 *See* ICE, Weekly Declined Detainer Outcome Report For Recorded Declined Detainers Feb. 11 – 17, 2017, https://www.ice.gov/doclib/ddor/ddor2017_02-11to02-17.pdf.

21 Ron Nixon, *Trump Administration Halts Reports on Immigration Cooperation*, N.Y. Times (Apr. 10, 2017), https://www.nytimes.com/2017/04/10/us/politics/trump-administration-immigration.html?_r=1.

22 *See, e.g.,* Sessions Declined Detainer Statement, *supra* note 3; ICE, Declined Detainer Outcome Report FAQs, https://www.ice.gov/declined-detainer-outcome-report (follow "FAQs" hyperlink; then follow "Q: Why do some jurisdictions ignore detainers?" hyperlink); Press Release, The White House, Statement on Sanctuary Cities Ruling (Apr. 25, 2017), https://www.whitehouse.gov/the-press-office/2017/04/25/statement-sanctuary-cities-ruling.

23 *See Galarza v. Szalczyk*, 745 F.3d 634, 639-42 (3d Cir. 2014) (holding that ICE detainers are requests and a local LEA is not required to comply with them); *Miranda-Olivares v. Clackamas County*, No.

3:12-cv-2317-ST, 2014 WL 1414305, at *5-8 (D. Or. Apr. 11, 2014) (same); *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 40 (D.R.I. 2014) ("ICE detainers are not mandatory. Federal regulations clearly label ICE detainers as 'requests.'"). *See also* Declined Detainer Outcome Report FAQs, *supra* note 22 ("Q: Is DHS changing its legal position that ICE detainers are voluntary? A: DHS has not retreated from its position that detainers serve as a legally-authorized *request*...") (emphasis added).

24 *See, e.g.,* Sessions Declined Detainer Statement, *supra* note 3; Sessions White House Press Briefing, *supra* note 3.

25 Dep't of Homeland Security, Immigration Detainer – Notice of Action, https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf ("DHS Form I-247A"); ICE, Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers at 3.1(defining a detainer as a "notice that ICE issues to a federal, state, local, or tribal LEA to inform the LEA that ICE intends to assume custody of a removable alien in the LEA's custody."), https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf ("ICE Policy").

26 *See supra* note 23.

27 The Tenth Amendment to the U.S. Constitution provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const., amend. X.

28 *New York v. United States*, 505 U.S. 144, 188 (1992). The compelled conduct invalidated in *New York* was a federal statutory requirement that States enact legislation providing for the disposal of their radioactive waste or else take title to that waste. *Id.* at 152-54.

29 *Printz v. United States*, 521 U.S. 898, 935 (1997). The compelled conduct invalidated in *Printz* was the Brady Handgun Violence Prevention Act's requirement that state and local law enforcement officers perform background checks on prospective firearm purchasers. *Id.* at 903-04.

30 *See id.* at 904-05 (allowing county-level law enforcement officials to raise Tenth Amendment claim); *see also Lomont v. O'Neill*, 285 F.3d 9, 13 (D.C. Cir. 2002) (same); *City of New York v. United States*, 179 F.3d 29, 34 (2d Cir. 1999) (city may raise a Tenth Amendment claim).

31 *See Galarza*, 745 F.3d at 643-44 (holding that in light of *Printz*, 521 U.S. at 898, and *New York*, 505 U.S. at 144, "a conclusion that a detainer issued by a federal agency is an order that state and local agencies are compelled to follow, is inconsistent with the anti-commandeering doctrine of the Tenth Amendment."); *see also Miranda-Olivares*, 2014 WL 1414305, at *6 ("a conclusion that Congress intended detainers as orders for municipalities . . . would raise potential violations of the anti-commandeering principle.").

32 Exec. Order, *supra* note 4, at § 9(a).

33 8 U.S.C. § 1373(a) (emphasis added).

34 *Id.* § 1373(b) (emphasis added).

35 *Id.* (emphasis added); *see Steinle v. City and County of San Francisco,* --- F. Supp. 3d ---, 2017 WL 67064, at *12 (N.D. Cal. Jan. 6, 2017) (Section 1373 only prohibits restrictions on the sharing of an individual's "citizenship or immigration status," and "no plausible reading" of the statute encompasses more than that. Federal law "does not require, in and of itself, any government agency or law enforcement official to communicate with [federal immigration authorities].")

36 On April 21, 2017, the U.S. Department of Justice sent letters to nine jurisdictions, reminding officials of their obligation to document their compliance with 8 U.S.C. § 1373 as a condition of receiving the Byrne Justice Assistance Grant from the Office

of Justice Programs ("OJP"). The letters note that "[f]ailure to comply with this condition could result in the withholding of grant funds, suspension or termination of the grant, ineligibility for future OJP grants or subgrants, or other action, as appropriate." The nine jurisdictions that received the letter are Miami Dade County, FL; Chicago, IL; Cook County, IL; New Orleans, LA; Las Vegas, NV; New York, NY; Philadelphia, PA; Milwaukee County, WI; and the state of California. Press Release, U.S. Dep't of Justice, Department of Justice Sends Letter to Nine Jurisdictions Requiring Proof of Compliance with 8 U.S.C. § 1373 (Apr. 21, 2017), https://www.justice.gov/opa/pr/department-justice-sends-letter-nine-jurisdictions-requiring-proof-compliance-8-usc-1373 (follow "Proof of Compliance with 8 U.S.C. § 1373 Letters" hyperlink).

37 Exec. Order, *supra* note 4, at § 9(b). *See also County of Santa Clara*, 2017 WL 1459081, at *13 ("Section 9(b) equates 'sanctuary jurisdictions' with 'any jurisdiction that ignored or otherwise failed to honor any detainers with respect to [aliens that have committed criminal actions].' This language raises the reasonable concern that a state or local government may be designated a sanctuary jurisdiction, and subject to defunding, if it fails to honor ICE detainer requests.")

38 Exec. Order, *supra* note 4, at § 9(a).

39 Sessions White House Press Briefing, *supra* note 3.

40 *County of Santa Clara*, 2017 WL 1459081, at *13.

41 *See id*. at *23-24 (finding that counties were likely to succeed on their claims that the Executive Order violates the Tenth Amendment as it compels them to, *inter alia*, comply with ICE detainer requests or risk losing all federal grants.)

42 The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

43 *See, e.g*., N.Y. Const. art. I, § 12 ("The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."); Cal. Const. art. I, § 13 ("The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized."); Md. Decl. of Rights, art. 26 ("That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted."); *see also Parker v. State*, 402 Md. 372, 386 (2007) ("Article 26 of the Maryland Declaration of Rights is '[i]nterpreted as generally *in pari materia* with the Fourth Amendment' and 'has a like, though not identical, purpose.'") (citation omitted); Oreg. Const. art. I, § 9 ("No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."); R.I. Const. art. I, § 6 ("The right of the people to be secure in their persons, papers and possessions, against unreasonable searches and seizures, shall not be

violated; and no warrant shall issue, but on complaint in writing, upon probable cause, supported by oath or affirmation, and describing as nearly as may be, the place to be searched and the persons or things to be seized."); and Wash. Const. art. 1, § 7 ("No person shall be disturbed in his private affairs, or his home invaded, without authority of law.").

44 *See Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (seizure that is initially lawful "can become unlawful if it is prolonged beyond the time reasonably required to complete that mission"); *see also Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015) ("Because Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification"); *Miranda-Olivares*, 2014 WL 1414305, at *9-11 (distinguishing between "administrative delays" and "investigative delays" following a court order to release an individual, and holding that continued detention due to "investigative delays" constitutes a new seizure for Fourth Amendment purposes).

45 *See, e.g.,* N.Y. Crim. Proc. § 120.10(1) (describing a warrant of arrest as "a process issued by a local criminal court directing a police officer to arrest a defendant designated in an accusatory instrument filed with such court and to bring him before such court in connection with such instrument"); Cal. Penal Code §§ 813, 817 (describing process and standards for issuing post-complaint and pre-complaint arrest warrants, respectively); Wash. Super. Ct. Crim. R. 2.2(a)(2) ("A warrant of arrest may not issue unless the court determines that there is probable cause to believe that the defendant committed the offense charged.").

46 DHS Form I-247A, *supra* note 25.

47 *See Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) (A "warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed") (citations omitted); *see generally Gerstein v. Pugh*, 420 U.S. 103, 111-12 (1975) (discussing the underlying basis of Fourth Amendment's probable cause requirement); *see also* N.Y. Crim. Proc. § 140.10(1)-(2) (specifying the circumstances in which certain state law enforcement officers may make warrantless arrests); Cal. Penal § 836(a) (same); Wash. Rev. Code § 10.31.100 (specifying the limited circumstances under which a police officer may make warrantless arrests).

48 *See Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012) ("As a general rule, it is not a crime for a removable alien to remain present in the United States.") (citation omitted).

49 *See, e.g.*, *Mercado v. Dallas County,* No. 3:15-cv-3481-D, 2017 WL 169102, at *7 (N.D. Tex. Jan. 17, 2017) (holding that plaintiffs sufficiently alleged that defendant violated the Fourth Amendment by detaining plaintiffs pursuant to an ICE detainer after they were "otherwise eligible for release, solely on the basis of [defendant's] belief that plaintiffs had committed a *civil* immigration offense and without probable cause to believe they had committed a *criminal* offense.") (emphasis in original); *Villars v. Kubiatowski*, 45 F. Supp. 3d 791, 807-08 (N.D. Ill., 2014) (denying motion to dismiss where plaintiff alleged that local law enforcement agents lacked probable cause that plaintiff violated federal criminal immigration law, and noting that "the Supreme Court has not resolved whether local police officers may detain or arrest an individual for suspected *criminal* violations, [but] the Court has said that local officers generally lack authority to arrest individuals suspected of *civil* immigration violations.") (citing *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 464 (4th Cir. 2013) (emphases in original). *See also Santos*, 725 F.3d at 464-66, 470 (holding that municipality was not entitled to qualified immunity in 42 U.S.C. § 1983 lawsuit seeking, *inter alia*, compensatory damages, where deputies violated arrestee's constitutional rights by detaining her solely based on suspected civil violations of federal immigration

law); *Melendres v. Arpaio*, 695 F.3d 990, 1000-01 (9th Cir. 2012) (affirming the district court's grant of a preliminary injunction against county law enforcement for practice of stopping and detaining Latinos as part of the county's program to crack down on illegal immigration; noting that "if the Defendants are to enforce immigration-related laws, they must enforce only immigration-related laws that are criminal in nature" and "[u]nlawful presence is not criminal.").

50 *See Miranda-Olivares*, 2014 WL 1414305, at *11 (holding that county violated plaintiff's constitutional rights because "ICE detainer alone did not demonstrate probable cause" to keep her in custody); *Morales*, 996 F. Supp. 2d at 39 (The Department of Corrections "was faced with a facially invalid request to detain Ms. Morales pending an investigation of her immigration status lodged solely based on her country of birth.").

51 Stip. & Order of Settlement and Discontinuation at 2, *Harvey v. City of New York*, No. 1:07-cv-00343-NG-LB (E.D.N.Y. June 12, 2009), ECF No. 41.

52 Under the terms of the settlement, this amount includes attorney's fees and costs. *Id.*

53 Press Release, Northwest Immigrant Rights Project, Northwestern Immigrant Rights Project & Center for Justice Achieve Settlement in Case of Immigrant Detained Unlawfully (Sept. 17, 2010), https://www.nwirp.org/northwest-immigrant-rights-project-center-for-justice-achieve-settlement-in-case-of-immigrant-detained-unlawfully/.

54 Press Release, ACLU of Colorado, JeffCo Sheriff to pay $40K to settle claim of illegally imprisoning Colorado resident, http://aclu-co.org/jeffco-sheriff-to-pay-40k-to-settle-claim-of-illegally-imprisoning-colorado-resident/ (last visited Apr. 4, 2017).

55 Of this amount, Jefferson County paid $40,000 and the United States paid $50,000.

56 Consent Judgment for Injunctive Relief and Damages ¶ 6, *Cacho v. Gusman*, No. 2:11-cv-00225-SS (E.D. La. Aug. 9, 2013), ECF No. 96.

57 This amount includes $55,799.36 in attorney's fees and costs. Judgment on Attorney Fees, *Cacho v. Gusman*, No. 2:11-cv-00225-SS (E.D. La. Sep. 29, 2014), ECF No. 109.

58 *Galarza v. Szalczyk* Case Page, ACLU (June 18, 2014), https://www.aclu.org/cases/immigrants-rights/galarza-v-szalczyk?redirect=immigrants-rights/galarza-v-szalczyk.

59 Of this amount, Lehigh County, Pennsylvania paid $95,000 in damages and attorney's fees, while the City of Allentown and the United States paid $50,000. *Id.*

60 Marjorie Cortez, *S.L. County settles 2011 lawsuit over man's unlawful detainment for immigration status check*, Deseret News (Aug. 25, 2014), http://www.deseretnews.com/article/865609569/SL-County-settles-2011-lawsuit-over-mans-unlawful-detainment-for-immigration-status-check.html.

61 This amount includes damages, attorney's fees and costs. *Id.*

62 Nancy Lofholm, *Colorado county jails no longer holding immigrants for ICE*, Denver Post (Sept. 18, 2014), http://www.denverpost.com/2014/09/18/colorado-county-jails-no-longer-holding-immigrants-for-ice/.

63 Torsten Ove, *Allegheny County to pay $25,000 to West Mifflin woman for holding her on immigration detainer*, Pittsburgh Post-Gazette (Nov. 18, 2015), http://www.post-gazette.com/local/region/2015/11/18/Allegheny-County-to-pay-25-000-to-West-Mifflin-woman-for-holding-her-on-immigration-detainer/stories/201511180195?pgpageversion=pgevoke.

64 *Roy v. County of Los Angeles* Case Page, ACLU, https://www.aclu.org/cases/roy-et-al-v-los-angeles-county (last updated Oct. 19, 2012); Notice of Meeting at 2, 8, County of Los Angeles Claims Board, (Nov. 16, 2015), http://file.lacounty.gov/SDSInter/lac/1016994_111615.pdf.

65 Steve Mayes, *Women at center of landmark immigration case settles suit that changed jail holds in state, nation*, The Oregonian (May 18, 2015), http://www.oregonlive.com/clackamascounty/index.ssf/2015/05/woman_at_center_of_landmark_im.html.

66 This amount includes $97,373.14 in attorney's fees and costs. Op. and Order, *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST (D. Or. Aug. 28, 2015), ECF No. 163.

67 Joshua Kellogg, *Settlement possible for immigrant detainee lawsuit*, Farmington Daily Times (Mar. 24, 2017), http://www.daily-times.com/story/news/2017/03/24/settlement-possible-immigrant-detainee-lawsuit/99607504/. A federal judge preliminarily approved this settlement on March 24, 2017. The judge will hold a hearing on the proposed settlement on August 10, 2017.

68 Under the terms of the proposed settlement, this amount includes $300,000 in attorney's fees and expenses. *Id.*

69 Press Release, ACLU of Pennsylvania, Allegheny County Settles Lawsuit Involving US Citizen Illegally Detained by ICE (Nov. 18, 2015), https://www.aclupa.org/news/2015/11/18/allegheny-county-settles-lawsuit-involving-us-citizen-illega.

70 *Galarza*, 745 F.3d at 636.

71 Betsy Woodruff, *American Citizen Trapped in ICE Jail*, Daily Beast (Mar. 31, 2017), http://www.thedailybeast.com/articles/2017/03/31/american-citizen-trapped-in-ice-jail.html; Syracuse University Transactional Records Access Clearinghouse ("SU TRAC"), *ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents* (Feb. 20, 2013), http://trac.syr.edu/immigration/reports/311/.

72 *Morales v. Chadbourne*, No. 12-30-M-LDA, 2017 WL 354292, at *8 (D.R.I. Jan. 24, 2017), *appeal docketed*, No. 17-1300 (1st Cir. March 31, 2017).

73 *Id.*

74 *Id.* at *10.

75 Morales, 793 F.3d at 211-12.

76 *See* Woodruff, *supra* note 71.

77 DHS Form I-247A, *supra* note 25; ICE Policy, *supra* note 25.

78 DHS Form I-247A, *supra* note 25.

79 DHS I-200 (Rev. 09/16) "Warrant for Arrest of Alien," https://www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF; DHS I-205 (8/07) "Warrant of Removal/Deportation," https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF. As per new ICE policy effective April 2, 2017, all I-247A detainer requests must be accompanied

by either a DHS I-200 or DHS I-205. ICE Policy, *supra* note 25.

80 *Id.*

81 Renata Sago, *Florida Sheriffs Challenge Department of Homeland Security*, WLRN (Apr. 5, 2017), http://wlrn.org/post/florida-sheriffs-challenge-department-homeland-security.

82 *Id.*

83 Mark S. Nelson, *Letter: Sheriffs Won't Be Deterred from Core Mission by Arbitrary Federal Mandates or Threats* (Mar. 31, 2017), http://www.chronline.com/opinion/letter-sheriffs-won-t-be-deterred-from-core-mission-by/article_a7041c94-1686-11e7-ae71-b763c6c1efd3.html.

84 Although the federal government has wide latitude to condition its funding to states and localities on their fulfillment of certain conditions, the U.S. Supreme Court has established some limitations on that authority. Importantly, the federal government cannot use its spending power "to induce the States to engage in activities that would themselves be unconstitutional." South Dakota v. Dole, 483 U.S. 203, 210 (1987). Thus, an attempt by the federal government to withhold *any* funding based on a state or LEA's refusal to violate the Fourth Amendment would itself be a violation of law.

85 *Washington Counties Among Nation's Least Cooperative with ICE*, Kiro 7 News (Mar. 21, 2017), http://www.kiro7.com/news/local/washington-counties-among-nations-least-cooperative-with-ice/504757325.

86 *See, e.g., Morales*, 2017 WL 354292, at *6 (characterizing ICE's argument as "disingenuous at best").

87 Seth M.M. Stodder, *Why I changed my mind on 'sanctuary' cities*, Politico (Mar. 31, 2017), http://www.politico.com/agenda/story/2017/03/changed-position-sanctuary-cities-trump-000386. (emphasis in original).

88 *Id.*

89 Sheriffs' Amicus Brief, *supra* note 1, at 1.

90 Laurence Benenson, Nat'l Immigration Forum, Law Enforcement Immigration Task Force Principles (2015). See Appendix B for a list of law enforcement officers who have endorsed these principles.

91 Interview by N.Y. State Office of the Att'y Gen. with Michael Ciminelli, Police Chief, RPD (Apr. 4, 2017).

92 RPD, Training Bulletin # P-75-17 "Sanctuary City Resolution" (Mar. 23, 2017).

93 *Id.*

94 *Id.*

95 Katherine Beckett, Ph.D. and Heather Evans, M.A., *Immigration Detainer Requests in King County, Washington: Costs and Consequences*, (Mar. 26, 2013), https://www.weareoneamerica.org/sites/weareoneamerica.org/files/BeckettXEvans_ICE-Detainer-Report_FINAL.pdf.

96 Mot. for Prelim. Inj., Neusel Decl. at 3, *County of Santa Clara v. Trump*, No. 17-cv-574 (N.D. Cal. Feb. 3, 2017).

97 Kelly Zegers, *Leave immigration issues up to the feds, local police chiefs say*, Suffolk Times (Mar. 24, 2017), http://suffolktimes.timesreview.com/2017/03/74181/leave-immigration-issues-up-to-the-feds-local-police-chiefs-say/

98 The President's Task Force on 21st Century Policing, *Final Report* (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

99 Laurence Benenson, Nat'l Immigration Forum, Law Enforcement Immigration Task Force Principles (2015).

100 Complaint at 1, *City of Richmond v. Trump*, No. 17-cv-1535 (N.D. Cal. Mar. 21, 2017), ECF No. 1.

101 Declaration of Commander Peter Walsh in Support of City and County of San Francisco's Motion for Preliminary Injunction at 1, *City & County of San Francisco v. Trump*, No. 17-Cv-485 (N.D. Cal. Mar. 8, 2017), ECF No. 25.

102 Liz Robbins, *Police Fear Trump Immigration Orders May Handcuff Effort to Fight Gangs*, N.Y. Times (Feb. 22, 2017), https://www.nytimes.com/2017/02/22/nyregion/police-fear-trump-immigration-orders-may-handcuff-effort-to-fight-gangs.html?_r=0.

103 Pamela Constable, *For immigrant women, domestic violence creates a double shadow*, Wash. Post (Dec. 2, 2013), http://wapo.st/IBuALl?tid=ss_mail.

104 Steve Lopez, *LAPD Chief Beck explains why he doesn't want his officers to be immigration cops*, L.A. Times (Jan. 28, 2017), http://www.latimes.com/local/california/la-me-0129-lopez-beck-immigration-20170127-story.html.

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