GUIDANCE MEMORANDUM

Local Enforcement of Federal Immigration Law: Legal Guidance for Maryland State and Local Law Enforcement Officials

May 2017

INTRODUCTION

For some time now, questions have arisen about the extent to which State and local law enforcement officials may, or are required to, assist U.S. Immigration and Customs Enforcement ("ICE") and the Customs and Border Protection ("CBP") officials with the enforcement of federal immigration law. In August 2014, our Office issued advice on the "ICE detainers" issued by federal immigration officials when they seek custody of suspected removable aliens.[1] In that letter, our Office concluded that (a) compliance with ICE detainers is voluntary, and (b) State and local law enforcement officials are potentially exposed to liability if they hold someone beyond his or her State-law release date without a judicial warrant or probable cause that the detainee has committed a crime.[2]

In light of recent federal measures designed to restrict immigration and intensify the enforcement of federal immigration laws, we are now updating and supplementing our 2014 guidance. The purpose of this new guidance is to describe for Maryland State and local governments the current legal landscape governing the participation of law enforcement officials in immigration enforcement, and to help those officials make decisions about how to engage with federal immigration officers.

This guidance reaches several legal conclusions for State and local law enforcement agencies ("LEAs") to consider as they interact with federal immigration law and officials:

> 1. LEAs face potential liability exposure if they seek to enforce federal immigration laws, particularly if they do so outside the context of a federal cooperation agreement under 8 U.S.C. § 1357(g)(1).
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> 2. LEAs must absorb all costs associated with federal cooperation agreements under 8 U.S.C. § 1357(g)(1). The federal government does

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[1] Letter from Adam D. Snyder, Chief Counsel, Opinions & Advice, to the Hon. Douglas W. Mullendore, Washington County Sheriff (Aug. 14, 2014).

[2] This guidance applies equally to all non-federal law enforcement officers and agencies, whether they operate at the municipal, county, or state level. To distinguish those officers from federal immigration officers, we will sometimes refer to them together as "local" officials, but at other times we will refer to both State and local entities. These differences in nomenclature are not intended to have substantive effect.

not provide reimbursement for these agreements, and the agreements may increase the risk of unconstitutional profiling.

3. LEAs face potential liability exposure if they honor ICE or CBP detainer requests unless the request is accompanied by a judicial warrant or supported by information providing probable cause that the subject of the detainer has committed a crime.

4. State and local officers may not be prohibited from sharing information about a detainee's citizenship or immigration status with federal immigration officials, but they are not required to do so either.

5. As an overriding principle, the government bears the burden of proving that the detention of someone beyond the person's State-law release date does not violate the Fourth Amendment and its Maryland counterpart.

AUTHORITIES GOVERNING LOCAL PARTICIPATION IN THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS

A. The Tenth Amendment to the U.S. Constitution

The Tenth Amendment to the United States Constitution[3] limits the federal government's ability to mandate particular action by states and localities, including in the area of federal immigration law enforcement and investigations. The federal government cannot "compel the States to enact or administer a federal regulatory program," or compel state employees to participate in the administration of a federally enacted regulatory scheme.[4] The anti-commandeering restrictions of the Tenth Amendment extend not only to states but also to localities and their employees.[5] Voluntary cooperation with a federal scheme does not present Tenth Amendment issues, but the federal government may not

[3] The Tenth Amendment to the United States Constitution provides that "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."

[4] *New York v. United States*, 505 U.S. 144, 188 (1992) (federal government may not compel states to enact legislation providing for the disposal of their radioactive waste or else take title to that waste); *Printz v. United States*, 521 U.S. 898, 935 (1997) (federal government may not require state and local law enforcement officers to perform background checks on prospective firearm purchasers).

[5] *See Printz*, 521 U.S. at 904-05 (county); *City of New York v. United States*, 179 F.3d 29, 34 (2d Cir. 1999) (municipality).

force state or local officials to carry out federal law, either directly or indirectly through the withdrawal of unrelated federal funding.[6]

> *The Tenth Amendment bars the federal government from requiring local law enforcement officials to enforce federal immigration law.*

B. Federal Immigration Laws

1. Information Sharing Under 8 U.S.C. § 1373

Federal law does not *require* any local governmental agency or law enforcement officer to communicate with federal immigration authorities. Rather, federal law only requires that state and local governments not *bar* their employees from sharing certain types of information with federal immigration authorities. Specifically, 8 U.S.C. § 1373 provides that state and local governments cannot prohibit employees or entities "from sending to, or receiving from, [federal immigration authorities] information regarding the citizenship or immigration status, lawful or unlawful, of any individual."[7] In addition, state and local governments may not impose restrictions on "exchanging" information regarding "immigration status" with "any other Federal, State, or local government entity" or on "maintaining" such information.[8]

By its terms, 8 U.S.C. § 1373 applies only to information regarding an individual's "citizenship" or "immigration status"; it does not apply to other types of information, such as information about an individual's release, next court date, or address.[9] In addition, § 1373 places no affirmative obligation on LEAs to *collect* information about an individual's immigration status. Thus, local governments may adopt policies prohibiting their officers and employees from inquiring about a person's immigration status except where required by law.

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[6] *See Lomont v. O'Neill*, 285 F.3d 9, 14 (D.C. Cir. 2002); *see also Nat'l Fed. of Ind. Bus. v. Sebelius*, 132 S. Ct. 2566, 2602 (2012).

[7] 8 U.S.C. § 1373(a).

[8] 8 U.S.C. § 1373(b).

[9] As discussed below, the U.S. Department of Justice has indicated that it interprets § 1373 to preclude more than express restrictions on information disclosure. *See infra*, § C.

Finally, the Tenth Amendment, as discussed above, may further limit § 1373's reach. Although at least one court has held that § 1373 does not, on its face, violate that Amendment's anti-commandeering restrictions, the same court indicated that the Tenth Amendment may be read to limit the reach of § 1373 where a state or locality can show that the statute creates "an impermissible intrusion on state and local power to control information obtained in the course of official business or to regulate the duties and responsibilities of state and local governmental employees."[10] The Tenth Amendment thus might protect local efforts to keep information confidential—even from the federal government—if such information is "essential to the performance of . . . state and local governmental functions" where those functions would be "difficult or impossible" to perform "if some expectation of confidentiality is not preserved."[11] If a local jurisdiction determines, therefore, that the sharing of information about citizenship or immigration status would make it "difficult or impossible" to perform essential governmental functions, the Tenth Amendment might justify a policy of not providing information under § 1373.

Federal law does not require local law enforcement to share with federal officials information about citizenship or immigration status. However, State and local officials may not prohibit such sharing unless maintaining confidentiality is necessary to perform state and local governmental functions.

2. Cooperation Agreements Under 8 U.S.C. § 1357(g)

Section 287(g) of the Immigration and Nationality Act—which is codified at 8 U.S.C. § 1357(g)—enables ICE to enter into agreements with state and local law enforcement agencies and authorize designated local officers to perform immigration-enforcement functions. After an agreement is signed, officers selected by the state or

[10] *City of New York*, 179 F.3d at 37. The Court rejected the City's Tenth Amendment argument on the grounds that—based on the record before it—the City kept immigration-related information confidential from the federal government only and made it available to others. *Id.* The Court expressly declined to reach how the Tenth Amendment would apply to "generalized confidentiality policies that are necessary to the performance of legitimate municipal functions and that include federal immigration status." *Id.*

[11] *Id.*

local agency receive federal training on how to access immigration databases, complete immigration forms, and otherwise carry out the functions of federal immigration agents. State and local law enforcement officials "deputized" through one of these agreements perform the same functions performed by federal immigration agents: they have access to federal immigration databases, may interrogate and take into custody noncitizens believed to have violated federal immigration laws, and may lodge "detainers" against alleged noncitizens held in state or local custody.[12]

A local law enforcement officer deputized under such an agreement functions as a federal officer and is treated as such for purposes of the Federal Tort Claims Act[13] and worker's compensation claims[14] when performing functions under the agreement.[15] In addition, authorized local personnel enjoy the same defenses and immunities from personal liability for their in-scope acts that are available to ICE officers,[16] and may request—but are not entitled to—representation by the Department of Justice in any litigation arising from activities carried out under the agreement.[17]

With federal authority, however, come federal obligations. When local personnel act under *federal* authority, they must comply with a variety of different federal standards and guidelines. For example, deputized local officials must comply with the federal government's rules governing the disclosure of impeachment information about potential witnesses.[18] They also must comply with the federal Privacy Act of 1974 and associated regulations and guidelines regarding data collection and use of information.[19]

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[12] *See* § B.3 below (discussing detainers).

[13] 28 U.S.C. §§ 1346(b)(l), 2671-2680.

[14] 5 U.S.C. § 8101 *et seq*.

[15] *See* 8 U.S.C. § 1357(g)(7); 28 U.S.C. § 2671.

[16] *See* 8 U.S.C. § 1357(g)(8).

[17] *See* 28 C.F.R. § 50.15.

[18] *See* Model § 287(g) Agreement, ¶ XII, available at https://www.ice.gov/doclib/detention-reform/pdf/287g_moa.pdf; *Giglio v. United States*, 405 U.S. 150 (1972) (requiring the disclosure of material tending to impeach the character or testimony of the prosecution witness in a criminal trial).

[19] *See* 5 U.S.C. § 552a, 6 C.F.R. §§ 5.20-5.36. A recent Presidential Executive Order reversed the prior Administration's policy of applying the protections of the federal Privacy Act

The decision to enter into a § 287(g) agreement is purely discretionary; local jurisdictions are not required to do so.[20] The federal government, while it encourages such agreements, does not reimburse local jurisdictions for the expenses their officers incur while assisting with federal immigration enforcement activities.[21] And providing such assistance with officers who have only limited expertise and training in immigration enforcement risks the type of racial profiling that is unconstitutional, as our Office stated in our 2015 guidance memorandum, "Ending Discriminatory Profiling in Maryland."[22]

Local law enforcement agencies may, but are not required to, enter into agreements deputizing their officers to exercise federal immigration enforcement powers. The federal government does not provide reimbursement for these agreements, and the agreements may increase the risk of unconstitutional profiling.

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to undocumented immigrants, though other federal requirements remain in place. *See* Executive Order No. 13768, § 14.

[20] There are a number of policy considerations that are outside the scope of this legal guidance but that jurisdictions might wish to consider before entering into these agreements. For example, the enforcement of federal immigration laws might divert resources from the investigation of local crimes. Formal participation in federal immigration enforcement—particularly by patrol officers—might also discourage immigrant communities from coming forward with information about criminal activity. There are a number of reports describing how the local enforcement of federal immigration law can affect police/community relations. *See, e.g.*, American Immigration Council, "The 287(g) Program: An Overview" (Mar. 15, 2017); Nik Theodore, Department of Urban Planning and Policy, University of Illinois at Chicago, "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement" (May 2013). In addition, these agreements might discourage immigrant communities from coming forward to testify in court. *See* Letter from Brian E. Frosh, Attorney General of Maryland, to the Hon. John Kelly, Secretary, Department of Homeland Security *et al*. (March 2, 2017), at www.marylandattorneygeneral.gov/News%20Documents/Homeland%20Security_Ltr_030117.pdf.

[21] *See* 8 U.S.C. § 1357(g)(1) (stating that the actions of local officials under a cooperative agreement must be carried out "at the expense of the State or political subdivision").

[22] Guidance Memorandum, "Ending Discriminatory Profiling in Maryland" (Aug. 2015), at http://www.marylandattorneygeneral.gov/Reports/Ending_Discriminatory_Profiling.pdf; *see also Santos v. Frederick County Board of Commissioners*, 725 F.3d 451, 459 n.2 (4th Cir. 2013) (observing that, while the Fourth Circuit has not addressed the issue, "two other Circuit Courts have indicated that consensual encounters initiated solely based on race may violate the Equal Protection Clause").

3. ICE Detainers Under 8 U.S.C. §§ 1226 and 1357 and 8 C.F.R. § 287.7

When ICE learns that a local law enforcement agency has custody of an individual who might be in the country illegally, it might issue what is commonly referred to as an "immigration detainer." An immigration detainer advises local law enforcement that ICE is seeking custody of the individual and asks that the local agency hold the individual "for a period not to exceed 48 hours beyond the time when [the subject] would otherwise have been released" in order to allow ICE officials the opportunity to assume custody.[23] Immigration detainers are requests only; local officers are not obligated to honor them.[24]

An LEA's decision to comply with a detainer request and hold an individual beyond his or her normal release date constitutes a new "seizure." That new seizure must be justified under the Fourth Amendment and the analogous provisions of Article 26 of the Maryland Declaration of Rights.[25] The requirements of the Fourth Amendment do not change simply because ICE or CBP has issued a detainer request to an LEA.[26]

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[23] *See* Form I-247A ("Immigration Detainer – Notice of Action," March 2017).

[24] *See, e.g., Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir.2014); *Mercado v. Dallas County*, 2017 WL 169102, at *8-10 (N.D. Texas, Jan. 17, 2017); *Alfaro-Garcia v. Henrico County*, 2016 WL 5388946 (E.D. Va., Sept. 26, 2016); *People ex rel. Swenson v. Ponte*, 46 Misc.3d 273 (N.Y. Supr. Ct. 2014). Immigration detainers should not be confused with interstate criminal detainers subject to the Interstate Agreement on Detainers, which Maryland officials are obligated to fulfill. *See generally* Md. Code Ann., Corr. Serv. §§ 8-401 through 8-417.

[25] *See, e.g., Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *cf. Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (noting that a legitimate seizure "can become unlawful if it is prolonged beyond the time reasonably required" to achieve its purpose); *see also King v. State*, 434 Md. 472, 482-84 (2013) (construing Article 26 *in pari materia* with the Fourth Amendment); Title 2 of the Criminal Procedure Article, Annotated Code of Maryland (governing the arrest process under Maryland law).

[26] *See Orellana v. Nobles County*, 2017 WL 72397, at *8 (D. Minn. Jan. 6, 2017) (stating that immigration detainers "do not categorically provide law enforcement a constitutionally permissible predicate for an arrest"); *see also, e.g., Buquer v. City of Indianapolis*, 2013 WL 1332158, at *8 (S.D. Ind. Mar. 28, 2013). In court filings, ICE has taken the contrary position that immigration detainers *do* provide probable cause for state officers to detain someone. *See* Brief of the United States as Amicus Curiae in Support of Neither Party, *Massachusetts v. Lunn*, No. SJC-12276 (Mass., filed March 27, 2017) (citing *People v. Xirum*, 45 Misc. 3d 785 (N.Y. Supr. Ct. 2014) and *Miranda-Olivares v. Clackamas County*, No. 3:12-CV-02317-ST, 2014 WL 1414305, at *11 (D. Or. Apr. 11, 2014)).

Therefore, local officials who hold someone solely on the basis of having received a detainer request risk civil liability, including monetary damages and attorneys fees.[27]

In August 2014, our Office issued an advice letter evaluating the extent to which immigration detainers issued on specific grounds might provide a local officer probable cause to detain someone beyond their State-law release date. That evaluation hinged on the "check-boxes" provided on the form used by ICE officials at the time and the extent to which information conveyed through those boxes provided probable cause to believe that the subject had committed a crime.[28]

On March 24, 2017, ICE announced the introduction of a *new* form—Form I-247A—that officials must use effective April 2, 2017.[29] The new form and the guidance accompanying its introduction make two significant changes to the detainers and the process by which ICE officials issue them. First, the new immigration detainer form must now be accompanied by one of two administrative warrants: a Warrant for Arrest of Alien (Form I-200), or a Warrant for Removal/Deportation (Form I-205). According to the federal guidance, obtaining an administrative warrant will allow ICE officials to arrest undocumented individuals without having to make an individualized finding that the subject is "likely to escape," as is required for warrantless arrests under federal immigration laws.[30] Second, the new immigration form eliminates the multiple check-

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[27] *See, e.g., Santos v. Frederick County Bd. of Comm'rs*, 725 F.3d 451, 464-65 (4th Cir. 2013); *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015); *Miranda-Olivares v. Clackamas County*, No. 3:12-CV-02317-ST, 2014 WL 1414305 (D. Or. Apr. 11, 2014); *People ex rel. Swenson v. Ponte*, 46 Misc.3d 273 (N.Y. Supr. Ct. 2014); *see also Gerstein v. Pugh*, 420 U.S. 103, 111-12 (1975) (discussing underlying basis of Fourth Amendment's probable cause requirement). Liability will also depend, of course, on the applicability of other legal principles that govern the tort liability of State and local officials under 42 U.S.C. § 1983 and the State and local tort claims acts. Those issues, however, are beyond the reach of this analysis.

[28] ICE has used various versions of form I-247 over the years. *See Roy v. Cty. of Los Angeles*, 2016 WL 5219468, at *2 (C.D. Cal. Sept. 9, 2016) (describing evolution of the form from October 2010 until 2015). Our analysis focused on form I-247, which was in effect between December 2012 and March 2015.

[29] *See* ICE, Policy No. 10074.2, Issuance of Immigration Detainers by ICE Immigration Officers (March 24, 2017).

[30] 8 U.S.C § 1357(a)(2); ICE Policy No. 10074.2, ¶ 2.4; *see Moreno v. Napolitano*, No. 11-5452, —F.Supp.3d—, 2016 WL 5720465, at *1 (N.D. Ill. Sept. 30, 2016) (ruling that the detainer program exceeds DHS's statutory authority "by seeking to detain individuals without a warrant and without a determination by ICE that the individuals are 'likely to escape' within the meaning

boxes used on other forms—which described a wide variety of civil and criminal bases for continued detention—and replaces them with just four, each of which is focused purely on the subject's unauthorized presence in the United States.

As is discussed in greater detail in Appendix A, neither change alters our advice: Local officials may not hold someone beyond their State-law release date in the absence of a judicial warrant or probable cause that the subject has committed a crime. Although the issuance of an administrative warrant might authorize an arrest by a federal official or a local official operating under a § 287 agreement, it would not—by itself—authorize a continued detention under State law. The legality of a continued detention on the basis of a removal order is less clear; while there is some authority that removal orders justify local detentions, there is contrary authority as well.[31] Given that uncertainty, detaining someone on the grounds that they are the subject of a removal order may result in liability for an unlawful seizure.

As for the check-boxes provided on the new form, none of them gives local officials probable cause to believe that a detainee has committed a crime. Instead, all four boxes relate to the subject's unauthorized presence within the United States, which is a civil, not criminal, offense.[32] And, as with the warrant issues discussed in the preceding paragraph, the case law is split as to whether an order for removal—the first of the four check-boxes—justifies a local detention.[33] For these reasons, we recommend that LEAs respond to immigration detainers only when they are accompanied by a *judicial* warrant, or when further inquiry gives the local official probable cause to believe that a *crime*—not merely a civil offense—has been committed. Only under those

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of 8 U.S.C. § 1357(a)(2)"); *see also Orellana v. Nobles County*, 2017 WL 72397, at *8-9 (D. Minn. Jan. 6, 2017) (describing holding in *Moreno*); *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (highlighting the "particularized" inquiry probable cause demands).

[31] *See* Appendix A at A-2 (contrasting *People v. Xirum*, 45 Misc. 3d 785 (N.Y. Sup. Ct. 2014) with *People ex rel. Swenson v. Ponte*, 46 Misc. 3d 273 (N.Y. Sup. Ct. 2014)).

[32] *Arizona v. United States*, 567 U.S. 387, 132 S.Ct. 2492, 2505 (2012).

[33] *See* Appendix A at A-2.

circumstances will a local official have a clear legal basis to hold a detainee beyond his or her State-law release date.[34]

> *Local law enforcement officials face potential liability if they honor ICE detainers and hold someone beyond their State-law release date unless the detainer is accompanied by a judicial warrant or when the information provided with the detainer form establishes probable cause to believe that the detainee has committed a crime. Illegal presence in the United States is a civil offense and does not provide a clear basis for continued detention.*

C. Executive Order No. 13768, "Enhancing Public Safety in the Interior of the United States"

On January 25, 2017, the President of the United States issued Executive Order No. 13768 for the purpose of guiding the actions of federal agencies involved in immigration enforcement. On February 20, 2017, DHS published a memorandum implementing the Executive Order.[35] Together, these materials raise additional issues about the local enforcement of federal immigration law.[36]

The Executive Order and the DHS Memorandum both state that the federal government will seek increased cooperation from state and local governments in connection with immigration enforcement.[37] Both documents also address the § 1373 information-sharing provisions and the 287(g) agreements discussed above. Although neither document may legally alter federal statutory law on those topics, they provide some insight into how broadly the federal government construes those laws.

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[34] Of course, an individual held beyond his or her State-law release date must be afforded the same due process protections afforded to any other detainee. *See, e.g.,* Maryland Rule 4-212(f) (individual held on warrantless arrest must be given a copy of the charging document "be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest"); *see also* Form I-247A (stating that the detained individual "must be served with a copy of this form for the detainer to take effect" (emphasis omitted)).

[35] *See* "Enforcement of the Immigration Laws to Serve the National Interest," available at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf ("DHS Memorandum").

[36] Several jurisdictions have challenged the constitutionality of the executive order and, in one case, the court has issued a nationwide injunction blocking its implementation. *See County of Santa Clara v. Trump*, No. 17-CV-00485-WHO, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017).

[37] *See* Executive Order No. 13768, § 8; DHS Memorandum § B.

The Executive Order takes aim at so-called "sanctuary jurisdictions," which it describes as "jurisdictions that willfully refuse to comply with 8 U.S.C. § 1373."[38] The Order grants the U.S. Attorney General and the DHS Secretary authority to (1) designate localities as "sanctuary jurisdictions," and (2) ensure that jurisdictions so designated are ineligible for federal grants, "except as deemed necessary for law enforcement purposes."[39] The Executive Order further directs the U.S. Attorney General to take "appropriate enforcement action" against any jurisdiction that either violates § 1373 or "has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law."[40]

As discussed above, § 1373 relates only to sharing "information" regarding "citizenship or immigration status"; it does not restrict a locality from declining to share with federal immigration officials other types of information, such as non-public information about an individual's release, next court date, or address. Nor does § 1373 place an affirmative obligation on local governments to *collect* information about an individual's immigration status. An LEA that chooses not to share additional information with federal officials should not run afoul of § 1373 so long as its practices do not prohibit employees from sharing information regarding citizenship or immigration status.

Federal officials have, however, interpreted § 1373 broadly to include not only local rules that restrict the sharing of information about citizenship or immigration status, but any law, rule, or "practice" that has the *effect* of restricting that sharing. The Executive Order itself directs the U.S. Attorney General to take "appropriate enforcement action" against any jurisdiction that "has in effect a statute, policy, or practice that

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[38] Executive Order No. 13768, § 9.

[39] *Id*. The Executive Order also requires certain federal agencies to report information about "sanctuary jurisdictions" and publicize a list of criminal actions committed by immigrants and of jurisdictions that ignored or failed to honor detainer requests with respect to those immigrants. *Id*. ICE has temporarily suspended the publication of the "declined retainer outcome report" after questions were raised about its accuracy. *See* www.ice.gov/declined-detainer-outcome-report.

[40] Executive Order No. 13768, § 9.

prevents or hinders the enforcement of Federal law"[41]—a standard that seems to go beyond the narrow information-sharing that § 1373 is designed to protect. The federal government has also stated that a local policy prohibiting law enforcement officials from honoring detainer requests—which are not covered by § 1373—might qualify as a violation of § 1373,[42] particularly if it causes local officials to *believe* that all types of cooperation with federal immigration officials are prohibited.[43]

Local jurisdictions would be understandably concerned about the possible loss of federal funding if the U.S. Attorney General were to find that they have violated § 1373 under one of these federal interpretations. The federal government provides Maryland and its local jurisdictions with numerous grants in areas ranging from education and health care to social services and criminal justice, and the loss of federal funding could have significant consequences. Each grant is governed by different regulatory schemes, however, and the specific provisions of those schemes must be reviewed to determine whether they might restrict the federal government's ability to withhold funding.

Still, there are certain actions that an LEA can take without risking the loss of federal funding. A local jurisdiction's decision not to enter into a § 287(g) agreement cannot be considered a violation of § 1373.[44] And a local rule, policy, or practice of not cooperating with federal immigration authorities should not violate even the federal government's view of § 1373 if the local government does not restrict its employees from

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[41] *Id.* (emphasis added).

[42] *See* Attorney General Jeff Sessions, Remarks on Sanctuary Jurisdictions (Mar. 27, 2017), available at https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions) (citing jurisdictions "refusing to honor [ICE] detainer requests" as examples of conduct that violates § 1373).

[43] *See* United States Department of Justice, Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients (May 31, 2016), at 7 n.9 (suggesting that § 1373 also prohibits "actions of local officials" that "result in" employees not providing information to ICE) (available at https://oig.justice.gov/reports/2016/1607.pdf).

[44] *See* 8 U.S.C. § 1357(g)(9) ("Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection."); *see also* Executive Order No. 13768, § 8(b) (directing DHS to enter into § 287(g) agreements "with the consent of State or local officials, as appropriate"); DHS Memorandum at 4 (directing ICE officials to enter into agreements with those LEAs that make such a "request").

responding to federal requests for information about a person's citizenship or immigration status.

Finally, 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 identified limitations on that authority. First, the power to impose funding conditions under the Spending Clause lies with Congress, not the President or the federal agencies he oversees.[45] Second, Congress cannot use its spending power "to induce the States to engage in activities that would themselves be unconstitutional."[46] The federal government thus cannot condition a grant of federal funds on invidiously discriminatory state action, and likely cannot *withdraw* funds from a state that declines to fulfill detainers that would violate the Fourth Amendment. Third, any funding conditions must be reasonably related to the federal interest in the program at issue.[47] For this reason, the federal government likely cannot withdraw from so-called "sanctuary jurisdictions" federal funding that is not related to the enforcement of federal immigration laws.[48] Fourth, the funding condition must be stated "unambiguously" so that the recipient can "voluntarily and knowingly" decide whether to accept those funds and the associated requirements.[49] Accordingly, the federal government may not be able to withdraw federal funding on the basis of an expansive reading of the states' obligations under

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[45] *See County of Santa Clara v. Trump*, No. 17-CV-00485-WHO, 2017 WL 1459081, at *21-22; *see also Dole*, 483 U.S. at 206 (stating that Congress, incident to its power under Article I, § 8, "may attach conditions on the receipt of federal funds").

[46] *Dole*, 483 U.S. at 210.

[47] In *Dole*, the Supreme Court held that Congress could permissibly withhold 5% of certain highway funds from states that failed to raise their drinking age to 21 because raising the drinking age was "directly related to one of the main purposes for which highway funds are expended," namely "safe interstate travel." *Id*. at 208-09.

[48] The federal funding programs that seem most closely related to the enforcement of federal immigration law are the State Criminal Alien Assistance Program (SCAAP), the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, and the Community-Oriented Policing Services (COPS) grant program, all of which are administered by divisions of the U.S. Department of Justice.

[49] *See, e.g., Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). Of the law-enforcement related programs identified in the preceding footnote, only participation in the JAG program is expressly conditioned on compliance with "all other applicable Federal laws." 42 U.S.C. § 3752(a)(5)(D).

§ 1373. And finally, the amount of federal funding that a noncomplying State would forfeit cannot be so large that the State would be left with "no real option but to acquiesce" and accept the condition[50]—a limitation that would be implicated should the federal government seek to withdraw *all* federal funding from a jurisdiction. Depending on the amount and nature of any federal funding cut, states and localities may be able to challenge the defunding on one or more of these grounds.[51]

Although Executive Order No. 13768 threatens local jurisdictions with the loss of federal funds if they "hinder" federal immigration enforcement, local jurisdictions remain free not to enter into § 287(g) agreements or share information with federal immigration officials so long as they do not restrict employees from sharing with federal officials information about a person's citizenship or immigration status.

CONCLUSION

Much has changed since 2014, when our Office last provided advice on the local enforcement of federal immigration laws. Some changes have come through the courts, which continue to review the legality of local detentions on the basis of immigration detainers. Other changes have come through federal immigration enforcement policy, which is only now becoming subject to judicial review. These changes have created considerable legal uncertainty surrounding the local participation in the enforcement of federal immigration laws.

In light of this uncertainty, this guidance recommends a few basic principles to guide local law enforcement agencies as they interact with federal immigration law and officials:

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[50] *See, e.g., Nat'l Fed. of Ind. Bus. v. Sebelius*, 132 S. Ct. 2566, 2604 (2012); *Dole*, 483 U.S. at 209.

[51] The Northern District of California, in enjoining the effect of the executive order, concluded that the plaintiff counties were likely to succeed not only on their claims that the executive order violates the Spending Clause and the Tenth Amendment, but also on their claims that the order is vague and fails to comport with the due process principles of the Fifth Amendment. *See County of Santa Clara v. Trump*, No. 17-CV-00485-WHO, 2017 WL 1459081, at *24-26.

1. LEAs face potential liability exposure if they seek to enforce federal immigration laws, particularly if they do so outside the context of a federal cooperation agreement under 8 U.S.C. § 1357(g)(1).

2. LEAs must absorb all costs associated with federal cooperation agreements under 8 U.S.C. § 1357(g)(1). The federal government does not provide reimbursement for these agreements, and the agreements may increase the risk of unconstitutional profiling.

3. LEAs face potential liability exposure if they honor ICE or CBP detainer requests unless the request is accompanied by a judicial warrant or supported by information providing probable cause that the subject of the detainer has committed a crime.

4. State and local officers may not be prohibited from sharing information about a detainee's citizenship or immigration status with federal immigration officials, but they are not required to do so either.

5. As an overriding principle, the government bears the burden of proving that the detention of someone beyond the person's State-law release date does not violate the Fourth Amendment and its Maryland counterpart.

Following these principles will allow law enforcement agencies to comply with federal law in a manner that respects the constitutional rights of individuals, protects local agencies and officials from potential legal liability, and allows them to remain faithful to their mission of promoting public safety.

APPENDIX A

The extent to which an immigration detainer authorizes a local official to detain someone beyond his or her State-law release date depends on what information is provided with the detainer form. In an August 2014 advice letter, our Office evaluated the extent to which the specific "check-boxes" provided on the form used by ICE officials at the time provided probable cause to believe that the subject had committed a crime.[1] On March 24, 2017, ICE announced that it would use a *new* form—Form I-247A—as of April 2, 2017.[2]

Form I-247A

The new detainer form is different from its predecessors in two significant ways: (1) the form must now be accompanied by either a Warrant for Arrest of Alien (Form I-200), or a Warrant for Removal/Deportation (Form I-205); and (2) the new form eliminates the multiple check-boxes used on previous forms—which described a wide variety and civil and criminal bases for continued detention—and replaces them with just four, each of which is focused purely on the subject's unauthorized presence in the United States.[3] We address the two developments separately.

1. Administrative Warrants

Like all administrative warrants, the two that may accompany the new immigration detainers are not reviewed or issued by a court or judicial officer. Instead, an ICE official issues them for the purpose of authorizing other ICE officials—or local officials operating under a § 287(g) agreement—to take a suspect into custody.[4] The Warrant for Arrest of Alien (Form I-200) is issued for the purpose of bringing someone before an administrative tribunal to determine whether he or she is subject to removal or deportation.[5] It is issued prior to adjudication of the individual's lawful status. A

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[1] Letter from Adam D. Snyder, Chief Counsel, Opinions & Advice, to the Hon. Douglas W. Mullendore, Washington County Sheriff (Aug. 14, 2014).

[2] *See* ICE, Policy No. 10074.2, Issuance of Immigration Detainers by ICE Immigration Officers (March 24, 2017).

[3] The new form I-247A and accompanying warrants are reproduced in their entirety at the back of this Appendix.

[4] *See* 8 C.F.R. § 287.5; 8 C.F.R. § 241.2.

[5] *See* 8 C.F.R. § 236.1(b).

Warrant for Removal/Deportation (Form I-205), by contrast, is issued *after* an adjudicative inquiry has already resulted in the issuance of an order of removal or deportation.[6]

The courts have reached mixed conclusions about the effect of these types of warrants. At least one court has held that a final order of deportation or removal—which generates the issuance of the Form I-205 Warrant for Removal/Deportation—provides "lawful authority" for local officials to detain the subject of the order.[7] The same court, however, suggested the opposite in a subsequent case,[8] and other courts have held more generally that arrests made pursuant to administrative immigration warrants must be treated as warrantless for purposes of state tort law and federal constitutional claims.[9]

Without settled law on whether a local officer may lawfully arrest an individual solely on the basis of an order of deportation or removal, we cannot assure local officers that such an arrest would not give rise to potential liability. Two reasons lie behind this conclusion. First, under federal immigration law, only a federally-authorized ICE agent is permitted to execute an administrative ICE warrant.[10] State and local officials

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[6] *See* 8 C.F.R. § 241.2 (stating that a warrant for removal is "based upon the final administrative removal order in the alien's case").

[7] *See People v. Xirum*, 45 Misc.3d 785, 789 (Sup. Ct. N.Y. 2014). Two other courts have suggested that it might have been reasonable for a local official to believe he had probable cause to detain someone who had been "subject to a warrant for arrest or order of removal or deportation by ICE," but neither included that within its holding. *See Miranda-Olivares*, No. 3:12-CV-02317-ST, 2014 WL 1414305, at *11; *see also Santos v. Frederick County Bd. of Comm'rs*, 725 F.3d 451, 458, 466 (4th Cir. 2013) (suggesting that an active, "outstanding ICE warrant for 'immediate deportation'" would have been sufficient to justify an arrest if the local officer had learned that the warrant was active before he had made the arrest).

[8] *See People ex rel. Swenson v. Ponte*, 46 Misc. 3d 273, 278 (Sup. Ct. N.Y. 2014) ("There is no allegation that the Department has actually obtained a removal order and, if in fact they had, there is still no authority for a local correction commissioner to detain someone based upon a civil determination, as immigration removal orders are civil, not criminal, in nature.").

[9] *See, e.g., El Badrawi v. Dept. of Homeland Sec.*, 579 F. Supp. 2d 249, 275-76 (D. Conn. 2008) (treating an arrest as warrantless under state law when ICE warrant and "Notice to Appear" were not issued by "neutral magistrates" and thus "are ignored for Fourth Amendment purposes"); *see also Coolidge v. N.H.*, 403 U.S. 443, 449 (1971); *Johnson v. U.S.*, 333 U.S. 10, 13-14 (1948) (holding the Fourth Amendment requires findings by a "neutral and detached magistrate" not just those of the investigating officer).

[10] *See* 8 U.S.C. § 1357(g)(1); 8 C.F.R. § 287.5(e); *see also Santos*, 725 F.3d at 463-64.

operating outside of a § 287(g) agreement have no such authority. Second, the underlying infraction for which the warrants are issued—being in the country illegally—is typically a *civil* infraction, which cannot justify a State-law arrest. For these reasons, we continue to recommend that local officials who receive a detainer accompanied by an administrative warrant not hold someone beyond their State-law release date in the absence of probable cause to believe that the subject has committed a crime.

Although neither warrant itself provides such probable cause, further inquiry into the circumstances justifying the issuance of the warrant might. Removal orders can be issued on several different grounds, including that the person has committed one of several categories of criminal offenses.[11] If a local official contacts ICE officials and learns that the individual is subject to removal for having committed a crime, that inquiry might provide a local official probable cause to detain the individual beyond his or her State-law release date. Although that type of additional inquiry could provide probable cause based on either type of warrant, it is more likely to do so when ICE has issued a Warrant for Removal/Deportation (Form I-205), which is issued after an adjudicative inquiry has already established grounds for removal.

It is important to remember that federal law does not require a local official to engage in this type of additional inquiry. Immigration detainers are voluntary requests only and the decision not to honor them does not violate federal law, at least as long as local officials remain free to communicate with federal immigration agents about a subject's citizenship or immigration status.

2. Check-Boxes

There are two sets of check-boxes on the new form, only one of which provides any information about the grounds on which the detainer is being issued.[12] The first set, which appears at the top of the page, states:

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[11] *See* 8 U.S.C. § 1227(a)(2).

[12] The form includes a second option for DHS to use when it originally transferred someone to an LEA for a local proceeding or investigation and is seeking to have custody over the subject returned. That option does not, however, provide any information that would bear on whether a local official has probable cause to detain someone beyond their State-law release date and we thus do not address it further.

> DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON:
>
> □ a final order of removal against the alien;
>
> □ the pendency of ongoing removal proceedings against the alien;
>
> □ biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
>
> □ statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

The last two, lengthy check-boxes plainly do not provide probable cause for a local official to believe that the subject has committed a crime. Both relate only to the subject's unauthorized presence within the United States, which the Supreme Court has made clear is a civil, not criminal, offense.[13] The second check-box—the pendency of ongoing removal proceedings against the alien—likewise does not establish probable cause. That removal proceedings are pending against someone does not mean that the individual has been adjudicated to be in the country illegally. At most, it indicates that the individual has been *charged* with immigration violations based on allegations made by ICE officials. The Supreme Court has made clear that a "Notice to Appear" form—which also signifies pending removal proceedings—"does not authorize an arrest."[14] That principle applies here, particularly if the underlying violation is illegal presence within the country, which is a civil infraction.

The first check-box—a final order of removal against the alien—presents a closer call. As discussed above with respect to the Warrant for Removal/Deportation (Form I-205), at least one court has held that the issuance of a final order of removal provides

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[13] *Arizona v. United States*, 132 S.Ct. at 2505.

[14] *Id*.

"lawful authority" for local officials to detain the subject of the order.[15] To some extent, the legality of a local arrest based solely on an order of removal might depend on what type of order has been issued. Federal immigration law provides for different types of removal orders, some issued by immigration judges, others by the U.S. Attorney General.[16] It might also depend on what lies behind a specific order. Generally speaking, a removal order indicates only that an individual is in the country illegally and is subject to deportation. Again, because a removal order is a *civil* order, not a criminal finding, it is less likely to provide the basis for a lawful local arrest. But if the removal order is issued in response to criminal activity, it might justify a local detention if the LEA learns of that criminal activity before fulfilling the detainer.[17]

In the absence of a clear judicial consensus that a local officer is authorized to make an arrest of the basis of an order of deportation of removal, we recommend that LEAs respond to detainers issued on this basis only when they are accompanied by a *judicial* warrant or when additional inquiry gives probable cause to believe a crime has been committed.

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[15] *See supra* at A-2; *see also People v. Xirum*, 45 Misc.3d 785, 789 (Sup. Ct. N.Y. 2014); *but see People ex rel. Swenson v. Ponte*, 46 Misc. 3d 273, 278 (N.Y. Sup. Ct. 2014).

[16] *Compare* 8 U.S.C. § 1229a *with* 8 U.S.C. § 1228(b).

[17] *See Santos*, 725 F.3d at 466.

DEPARTMENT OF HOMELAND SECURITY

IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: Event #:	File No: Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (Department of Homeland Security Office Address)

Name of Alien: _____

Date of Birth: _____ Citizenship: _____ Sex: _____

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON *(complete box 1 or 2).*

- ☐ A final order of removal against the alien;
- ☐ The pendency of ongoing removal proceedings against the alien;
- ☐ Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION *(complete box 1 or 2).*

- ☐ Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling ☐ U.S. Immigration and Customs Enforcement (ICE) or ☐ U.S. Customs and Border Protection (CBP) at _____. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- **Maintain custody** of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien **must be served with a copy of this form** for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien's death, hospitalization or transfer to another institution.

☐ If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

_____ (Name and title of Immigration Officer)

_____ (Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____ .

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____ , in the following manner:

☐ in person ☐ by inmate mail delivery ☐ other (please specify): _____

_____ (Name and title of Officer)

_____ (Signature of Officer) (Sign in ink)

SAMPLE

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice to a law enforcement agency that DHS intends to assume custody of you (after you otherwise would be released from custody) because there is probable cause that you are subject to removal from the United States under federal immigration law. DHS has requested that the law enforcement agency that is currently detaining you maintain custody of you for a period not to exceed 48 hours beyond the time when you would have been released based on your criminal charges or convictions. **If DHS does not take you into custody during this additional 48 hour period, you should contact your custodian** (the agency that is holding you now) to inquire about your release. **If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) le ha puesto una retención de inmigración. Una retención de inmigración es un aviso a una agencia de la ley que DHS tiene la intención de asumir la custodia de usted (después de lo contrario, usted sería puesto en libertad de la custodia) porque hay causa probable que usted está sujeto a que lo expulsen de los Estados Unidos bajo la ley de inmigración federal. DHS ha solicitado que la agencia de la ley que le tiene detenido actualmente mantenga custodia de usted por un periodo de tiempo que no exceda de 48 horas más del tiempo original que habría sido puesto en libertad en base a los cargos judiciales o a sus antecedentes penales. **Si DHS no le pone en custodia durante este periodo adicional de 48 horas, usted debe de contactarse con su custodio** (la agencia que le tiene detenido en este momento) para preguntar acerca de su liberación. **Si usted cree que es un ciudadano de los Estados Unidos o la víctima de un crimen, por favor avise al DHS llamando gratuitamente al Centro de Apoyo a la Aplicación de la Ley ICE al (855) 448-6903.**

AVIS AU DETENU OU À LA DÉTENUE

Le Département de la Sécurité Intérieure (DHS) a placé un dépositaire d'immigration sur vous. Un dépositaire d'immigration est un avis à une agence de force de l'ordre que le DHS a l'intention de vous prendre en garde à vue (après celà vous pourrez par ailleurs être remis en liberté) parce qu'il y a une cause probable que vous soyez sujet à expulsion des États-Unis en vertu de la loi fédérale sur l'immigration. Le DHS a demandé que l'agence de force de l'ordre qui vous détient actuellement puisse vous maintenir en garde pendant une période ne devant pas dépasser 48 heures au-delà du temps après lequel vous auriez été libéré en se basant sur vos accusations criminelles ou condamnations. **Si le DHS ne vous prenne pas en garde à vue au cours de cette période supplémentaire de 48 heures, vous devez contacter votre gardien (ne)** (l'agence qui vous détient maintenant) pour vous renseigner sur votre libération. **Si vous croyez que vous êtes un citoyen ou une citoyenne des États-Unis ou une victime d'un crime, s'il vous plaît aviser le DHS en appelant gratuitement le centre d'assistance de force de l'ordre de l'ICE au (855) 448-6903**

NOTIFICAÇÃO AO DETENTO

O Departamento de Segurança Nacional (DHS) expediu um mandado de detenção migratória contra você. Um mandado de detenção migratória é uma notificação feita à uma agência de segurança pública que o DHS tem a intenção de assumir a sua custódia (após a qual você, caso contrário, seria liberado da custódia) porque existe causa provável que você está sujeito a ser removido dos Estados Unidos de acordo com a lei federal de imigração. ODHS solicitou à agência de segurança pública onde você está atualmente detido para manter a sua guarda por um período de no máximo 48 horas além do tempo que você teria sido liberado com base nas suas acusações ou condenações criminais. **Se o DHS não leva-lo sob custódia durante este período adicional de 48 horas, você deve entrar em contato com quem tiver a sua custódia** (a agência onde você está atualmente detido) para perguntar a respeito da sua liberação. **Se você acredita ser um cidadão dos Estados Unidos ou a vítima de um crime, por favor informe ao DHS através de uma ligação gratuita ao Centro de Suporte de Segurança Pública do Serviço de Imigração e Alfândega (ICE) pelo telefone (855) 448-6903.**

SAMPLE

THÔNG BÁO CHO NGƯỜI BỊ GIAM

Bộ Nội An (DHS) đã ra lệnh giam giữ di trú đối với quý vị. Giam giữ di trú là một thông báo cho cơ quan công lực rằng Bộ Nội An sẽ đảm đương việc lưu giữ quý vị (sau khi quý vị được thả ra) bởi có lý do khả tín quý vị là đối tượng bị trục xuất khỏi Hoa Kỳ theo luật di trú liên bang. Sau khi quý vị đã thi hành đầy đủ thời gian của bản án dựa trên các tội phạm hay các kết án, thay vì được thả tự do, Bộ Nội An đã yêu cầu cơ quan công lực giữ quý vị lại thêm không quá 48 tiếng đồng hồ nữa. Nếu Bộ Nội An không đến bắt quý vị sau 48 tiếng đồng hồ phụ trội đó, quý vị cần liên lạc với cơ quan hiện đang giam giữ quý vị để tham khảo về việc trả tự do cho quý vị. Nếu quý vị là công dân Hoa Kỳ hay tin rằng mình là nạn nhân của một tội ác, xin vui lòng báo cho Bộ Nội An bằng cách gọi số điện thoại miễn phí 1(855) 448-6903 cho Trung Tâm Hỗ Trợ Cơ Quan Công Lực Di Trú.

被拘留者通知書

國土安全部(Department of Homeland Security，簡稱DHS)已經對你發出移民拘留令。移民拘留令為一給予執法機構的通知書，闡明DHS意欲獲取對你的羈押權(若非有此羈押權，你將會被釋放)；因為根據聯邦移民法例，並基於合理的原由，你將會被遞解離美國國境。DHS亦已要求現正拘留你的執法機構，在你因受到刑事檢控或定罪後，而在本應被釋放的程序下，繼續對你作出不超過四十八小時的監管。若你在這附加的四十八小時內，仍未及移交至**DHS**的監管下，你應當聯絡你的監管人(即現正監管你的機構)查詢有關你釋放的事宜。若你認為你是美國公民或為罪案受害者，請致電**ICE**執法部支援中心**(Law Enforcement Support Center)**知會**DHS**，免費電話號碼：**(855)448-6903**。

SAMPLE

U.S. DEPARTMENT OF HOMELAND SECURITY **Warrant for Arrest of Alien**

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

☐ the execution of a charging document to initiate removal proceedings against the subject;

☐ the pendency of ongoing removal proceedings against the subject;

☐ the failure to establish admissibility subsequent to deferred inspection;

☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

SAMPLE

_____
(Signature of Authorized Immigration Officer)

_____
(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

_____ _____
Name and Signature of Officer Name or Number of Interpreter (if applicable)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARRANT OF REMOVAL/DEPORTATION

File No: _____

Date: _____

To any immigration officer of the United States Department of Homeland Security:

_____
(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

_____
(Signature of immigration officer)

_____
(Title of immigration officer)

_____
(Date and office location)

SAMPLE

To be completed by immigration officer executing the warrant: Name of alien being removed:

_____

Port, date, and manner of removal: _____

Photograph of alien removed

Right index fingerprint of alien removed

_____
(Signature of alien being fingerprinted)

_____
(Signature and title of immigration officer taking print)

Departure witnessed by: _____
(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

_____

_____

_____

_____

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Departure Verified by: _____
(Signature and title of immigration officer)

SAMPLE