



Guidance to Law Enforcement:
*Authority Under Illinois and Federal Law
to Engage in Immigration Enforcement*

September 13, 2017



Over the past several months, officials at both the federal and state level have implemented changes to immigration enforcement policies and laws. On January 25, 2017, President Donald Trump issued an Executive Order entitled “Enhancing Public Safety in the Interior of the United States.”¹ Further, on August 28, 2017, Illinois enacted the Illinois Trust Act, a statewide law that clarifies and limits the authority of state and local officers to enforce federal civil immigration law or cooperate with federal immigration authorities.²

This guidance is intended to provide a summary of the President’s Executive Order and describe the new Illinois Trust Act. Based on the Executive Order and the Trust Act, this guidance will explain the limitations on the authority of local and state law enforcement to enforce federal immigration law. It also will provide guidance to municipalities and law enforcement about how the Executive Order and the Trust Act may affect any existing policies.

Illinois law enforcement agencies and officers³ are dedicated to protecting the communities they serve. Promoting public safety requires the assistance and cooperation of the community so that law enforcement has the ability to gather the information necessary to solve and deter crime. Law enforcement has long recognized that a strong relationship with the community encourages individuals who have been victims of or witnesses to a crime to cooperate with the police. The trust of residents is crucial to ensure that they report crimes, provide witness statements, cooperate with law enforcement and feel comfortable seeking help when they are concerned for their safety.

Building this trust is particularly crucial in immigrant communities where residents may be reluctant to engage with local police departments if they are fearful that such contact could result in deportation for themselves, their family or their neighbors. This is true of not only undocumented individuals who may be concerned about their own immigration status, but also citizens who may be worried about their parents, their children or other members of their family who immigrated to the United States.

Police officers will be hindered in maintaining public safety if violent crimes go unreported or witnesses withhold information.⁴ For the safety of the community and to effectively carry out their responsibilities, law enforcement have an interest in making sure that their policies and conduct do not create barriers that discourage or prevent cooperation from the immigrant community and their families.

¹ Executive Order 13768 of January 25, 2017, 82 Fed. Reg. 8799 (Jan. 30, 2017).

² Illinois Trust Act, Ill. Public Act 100-0463 (2017).

³ Throughout this guidance, “Illinois law enforcement” is used to describe state, county, and local law enforcement agencies in Illinois such as municipal police departments, county sheriffs’ offices, Illinois State Police and other non-federal law enforcement authorities, including campus police departments of public and private higher education institutions.

⁴ See James Queally, *Latinos Are Reporting Fewer Sexual Assaults amid a Climate of Fear in Immigrant Communities, LAPD Says*, LOS ANGELES TIMES (Mar. 21, 2017), <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>.

Executive Summary

Federal and state law – including the newly enacted Illinois Trust Act – limit the authority of Illinois law enforcement agencies to engage in immigration enforcement activities. All law enforcement agencies and officers must be aware of and stay within these limitations when conducting law enforcement activities. This guidance provides an overview of relevant federal and state law and may be a useful resource to Illinois law enforcement agencies. In summary, based on constitutional protections, federal and state statutes, and policy considerations, Illinois law enforcement officers and agencies:

- Shall not stop, search, or arrest any individual on the sole basis that the individual is undocumented; arrests may be made only when Illinois law enforcement has an arrest warrant or probable cause to believe that a criminal offense has been committed;
- Are in violation of state law and constitutional protections if they detain an individual pursuant to an ICE detainer beyond his or her normal custody release date;
- Are not required to participate in immigration enforcement activities and shall treat a request from federal immigration authorities for access to detention facilities or individuals held by local authorities as a request, rather than an obligation;
- Are not required to inquire or collect information about individuals' immigration or citizenship status;
- Should consider whether any internal policies regarding sharing immigration status information with federal immigration authorities will promote trust and confidentiality in their communities;
- Should consider requiring all officers to identify the jurisdiction they represent when engaging with community members or knocking on doors to encourage transparency and cooperation and to avoid any concern or confusion about whether the officers work for federal immigration authorities.

I. Immigration Enforcement Generally

Immigration is a matter of federal law.⁵ Although some provisions of federal immigration statutes are criminal, deportation and removability are matters of civil law.⁶ The role of Illinois law enforcement in enforcing the civil portions of immigration law is limited.⁷

a. Immigration enforcement activities.

Illinois enforcement officers are permitted to enforce federal civil immigration law only in those limited circumstances where state and federal law authorize them to do so. There are only two circumstances where Illinois enforcement has been permitted by *federal law* to engage in immigration enforcement:

- Illinois law enforcement is permitted to arrest and detain an individual who has already been convicted of a felony and was deported, but returned to or remained in the United States after that conviction.⁸
- Illinois law enforcement may enter into a formal working agreement with the Department of Homeland Security (known as a Section 287(g) agreement) to assist in the “investigation, apprehension, or detention of aliens in the United States.”⁹ Pursuant to federal law, a law enforcement agency may enter into any such agreement only to “the extent consistent with State and local law.”¹⁰ **To date, there are no existing 287(g) agreements in Illinois.**¹¹

Even in those instances where federal law allows enforcement of immigration law, there is no express or inherent authority under Illinois law that permits Illinois law enforcement to enforce federal immigration law.¹² Further, as discussed below, Illinois law now expressly prohibits

⁵ *Arizona v. United States*, 132 S. Ct. 2492, 2498-99 (2012).

⁶ See *Gonzalez v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983) (discussing the distinction between criminal and civil federal immigration law).

⁷ *Id.*

⁸ 8 U.S.C. § 1252c.

⁹ 8 U.S.C. § 1357(g) (Section 287(g) of the Immigration and Nationality Act).

¹⁰ *Id.*

¹¹ This guidance is not intended to address Detention Services Intergovernmental Agreements, or any other contracts for the housing, safekeeping and subsistence of federal detainees, entered into between the U.S. Department of Justice and Illinois law enforcement agencies.

¹² See *People v. Lahr*, 147 Ill. 2d 379, 382 (Ill. 1992) (recognizing that the authority of local police officers to effectuate an arrest is dependent on the statutory authority given to them by the political body that created them); *Gonzalez v. City of Peoria*, 722 F.2d 468 (9th Cir. 1983) (requiring that state law grant local police the “affirmative authority to make arrests” under the specific provisions of the Immigration and Nationality Act that they sought to enforce).

Illinois law enforcement officials from engaging in certain actions to ensure that they do not enforce federal immigration law without proper legal authority.¹³

b. Immigration detainees and administrative warrants.

The Department of Homeland Security and ICE issue “Immigration Detainers” or “Hold Requests” when they have identified an individual in the custody of Illinois law enforcement who may be subject to a civil immigration removal proceeding.¹⁴ An Immigration Detainer is a notice from federal authorities that an individual in the custody of Illinois law enforcement may be subject to civil immigration proceedings, and it asks Illinois law enforcement to detain the individual for up to 48 additional hours past his or her release date to allow federal authorities to assume custody.¹⁵

On March 24, 2017, ICE issued a new policy establishing that all detainer requests (Form I-247A) will be accompanied by one of two forms signed by an ICE immigration officer: either (1) Form I-200 (Warrant for Arrest of Alien) or (2) Form I-205 (Warrant of Removal/Deportation).¹⁶ These forms are administrative warrants signed by ICE officers that authorize other ICE officers to detain an individual. They are not criminal warrants issued by a court and they do not constitute individualized probable cause that an individual has committed a criminal offense. Similarly, Illinois law enforcement is not authorized to arrest or detain an individual based on the previously issued Form I-247D (Immigration Detainer – Request for Voluntary Action), Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien) or Form I-247X (Request for Voluntary Transfer). Only federal officers have the authority to arrest an individual for violation of civil immigration law without a criminal warrant.¹⁷ Even if the individual may be subject to removal because he or she was convicted of a criminal offense, the removal proceeding and determination (through an order of removal issued by a civil court) is a matter of civil immigration law.

c. Sharing information with federal immigration authorities.

Under federal law, no state or local law or policy may prohibit any government entity or official from sharing information about the immigration status of an individual with federal authorities.¹⁸ As will be discussed further below, this federal law does not *require* Illinois law

¹³ This guidance contains a review of federal and state law. It is recommended that Illinois law enforcement agencies further consult with any local ordinances that may cover the topics discussed herein.

¹⁴ See 8 C.F.R. § 287.7; U.S. Immigration and Customs Enforcement, Policy No. 10074.2 “Issuance of Immigration Detainers by ICE Immigration Officers,” (March 24, 2017), available at <http://bit.ly/2q0QEJW>.

¹⁵ See *United States v. Abdi*, 463 F.3d 547, 551 (6th Cir. 2006).

¹⁶ U.S. Immigration and Customs Enforcement, Policy No. 10074.2 “Issuance of Immigration Detainers by ICE Immigration Officers,” (March 24, 2017), available at <http://bit.ly/2q0QEJW>.

¹⁷ *Arizona*, 132 S. Ct. at 2505-06; 8 U.S.C. § 1357.

¹⁸ 8 U.S.C. § 1373.

enforcement to share citizenship or immigration status information with federal authorities in any circumstance; all data sharing of this kind by Illinois law enforcement is completely voluntary.

II. Executive Order 13768 of January 25, 2017

Executive Order 13768 (“the Order”) addresses those jurisdictions that have limited the ability of local law enforcement to share information about the citizenship and immigration status of individuals with federal immigration authorities.¹⁹ Specifically, the Order authorizes the Attorney General of the United States and the Secretary of the Department of Homeland Security to “ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes.”²⁰ Under the Order, the Secretary has the authority and discretion to designate a jurisdiction as a “sanctuary jurisdiction.” The Order does not define “sanctuary jurisdictions,” although a memo issued by U.S. Attorney General Jeff Sessions stated that “the term ‘sanctuary jurisdiction’ will refer only to jurisdictions that willfully refuse to comply with 8 U.S.C. 1373” by prohibiting law enforcement or other government employees from sharing information about individuals’ immigration status with federal authorities.²¹ The memo further clarified that the Order is only intended to affect grants from the Department of Justice and Department of Homeland Security that explicitly reference compliance with 8 U.S.C. § 1373 as a condition of the grant. However, on April 25, 2017, a federal court entered a preliminary injunction that applies nationally to the provision of the Executive Order that disqualifies “sanctuary jurisdictions” from receiving federal grants.²² Therefore, the federal government currently may not enforce this particular provision against any jurisdiction.²³

The Order also revokes the Obama Administration’s priorities for enforcement, known as the Priority Enforcement Program (PEP), and revives an earlier program called Secure Communities. Under PEP, U.S. Immigration and Customs Enforcement (ICE) agents were directed to seek a transfer of an undocumented immigrant in the custody of state or local law enforcement only if the alien posed a demonstrable risk to national security or was convicted of specific criminal offenses.²⁴ Under the Secure Communities program reinstated by the Order, the Secretary of Homeland Security will prioritize removal of individuals who: have been convicted

¹⁹ Executive Order 13768 of January 25, 2017, 82 Fed. Reg. 8799 (Jan. 30, 2017).

²⁰ *Id.* at 8801 (Sec. 9(a)).

²¹ Memorandum from The Attorney General, “Implementation of Executive Order 13768 ‘Enhancing Public Safety in the Interior of the United States,’ May 22, 2017, available at <https://www.justice.gov/opa/press-release/file/968146/download>.

²² *Cty. of Santa Clara v. Trump*, No. 17-cv-574, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017) (an order denying the federal government’s motion to reconsider the preliminary injunction and to dismiss plaintiffs’ claims was entered on July 20, 2017).

²³ *Id.*

²⁴ Memorandum from Jeh Johnson, Secretary of the U.S. Department of Homeland Security, “Secure Communities,” Nov. 20, 2014, available at <http://bit.ly/29oZZk5> (hereinafter “Memo from Jeh Johnson”).

of any criminal offense; have been charged with any criminal offense; have committed acts which constitute a chargeable criminal offense; have engaged in fraud in connection with any matter before a governmental agency; have abused any program for the receipt of public benefits; are subject to a final order of removal; or pose a risk to public safety or national security.²⁵

Illinois law enforcement should anticipate increased enforcement efforts by federal authorities under these broader priorities. This may include an increase in the number of ICE detainer requests issued to Illinois law enforcement following National Crime Information Center (NCIC) background checks for individuals in the custody of Illinois law enforcement. **However, these federal priorities do not create or expand any authority for Illinois law enforcement to enforce federal immigration law.**

III. The Illinois Trust Act, Effective August 28, 2017

The Illinois Trust Act expressly states that Illinois law “does not currently grant State or local law enforcement the authority to enforce federal civil immigration laws.”²⁶ Specifically, the Trust Act prohibits Illinois law enforcement from (1) detaining or continuing to detain any individual *solely* on the basis of an immigration detainer or non-judicial immigration warrant, or (2) otherwise complying with an immigration detainer or non-judicial immigration warrant.²⁷ This means that an Illinois law enforcement agency cannot keep a person in its custody only because it received an immigration detainer or non-judicial immigration warrant. If the Illinois law enforcement agency does not have probable cause or a judicial warrant to continue to hold the person, it must release the person. Probable cause is *not* created by any request from federal immigration authorities. Consequently, Illinois law enforcement must deny any requests from federal immigration authorities – such as ICE or U.S. Customs and Border Protection (CBP) – for assistance to detain an individual solely on the basis of an immigration detainer or non-judicial immigration warrant.

Additionally, pursuant to the Trust Act, an Illinois law enforcement officer shall not stop, arrest, search, detain, or continue to detain a person *solely* based on his or her citizenship or immigration status.²⁸ Therefore, an officer who searches or arrests a person merely because the person is undocumented is committing an unlawful search or arrest.

The Trust Act makes clear that the above prohibitions do not apply if the Illinois law enforcement officer is presented with a valid, enforceable judicial warrant. An officer who releases

²⁵ 82 Fed. Reg. 8799, 8800 (Jan. 30, 2017); *see also* Memorandum from John Kelly, Secretary of the U.S. Department of Homeland Security, “Enforcement of the Immigration Laws to Serve the National Interest,” Feb. 20, 2017, available at <http://bit.ly/2miirQd> (hereinafter “Memo from John Kelly”).

²⁶ Ill. Public Act 100-0463, § 5 (2017).

²⁷ *Id.* § 15(a).

²⁸ *Id.* § 15(b).

a person in accordance with the Trust Act is immune from any civil or criminal liability that could result from any acts committed by the person who was released, as long as the officer acted in good faith and did not commit willful or wanton misconduct.²⁹

IV. Limited Authority of Illinois Law Enforcement to Enforce Federal Civil Immigration Law

Even if not explicitly prohibited by the Trust Act, local law enforcement's role in the enforcement of immigration law in Illinois is limited. Specifically, local law enforcement is not required to engage in immigration enforcement; has no authority to detain an individual pursuant to a federal administrative warrant; has no authority to detain an individual pursuant to an ICE detainer request; and is under no affirmative legal obligation to share any information about individuals in its custody with federal immigration authorities. **Importantly, local law enforcement officers cannot arrest an individual for a violation of a federal law without a warrant unless state law has granted them authority to do so.**³⁰ **Illinois law does not authorize Illinois law enforcement officers to arrest an individual for violating federal immigration law. Further, Illinois law now prohibits Illinois law enforcement from arresting a person solely based on his or her immigration status.**³¹

a. Federal law does not require Illinois law enforcement agencies to participate in enforcement of federal civil immigration law.

The federal government cannot require Illinois law enforcement to enforce federal law.³² Any requests by the federal government to participate in immigration enforcement activities must be viewed as requests for voluntary cooperation. As a result, Illinois law enforcement agencies bear the responsibility for the consequences of their decision to comply with such a request.³³ Further, any authorization from the federal government for Illinois law enforcement to enforce federal law is only effective if it is accompanied by authority under state law or is not prohibited

²⁹ *Id.* § 15(d).

³⁰ *Arizona v. United States*, 132 S. Ct. 2492, 2509-10 (2012) (“Authority of state officers to make arrests for federal crimes is, absent federal statutory instruction, a matter of state law”) (citing *United States v. Di Re*, 332 U.S. 581, 589 (1948)). See also *Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass. 2017) (finding no authority in Massachusetts common or statutory law that authorizes arrests for federal civil immigration violations and holding that court officers do not have the authority to detain an individual solely on the basis of a civil immigration detainer); Immigration and Naturalization Act, 8 U.S.C. § 1252c (authorizing State and local law enforcement officials to arrest and detain an alien who is illegally present and has been previously convicted of a felony “to the extent permitted by relevant State and local law”).

³¹ 725 ILCS 5/107-2 (describing the circumstances for arrest by law enforcement).

³² *Printz v. United States*, 521 U.S. 898, 923-24 (1997) (finding that the 10th Amendment prohibits the federal government from compelling the States to enact or administer a federal regulatory program).

³³ See *Villars v. Kubiakowski*, 45 F. Supp. 3d 791, 801-803 (N.D. Ill. 2014) (denying motion to dismiss claims against village police department for detaining individual post-bond); *Galarza v. Szalcyk*, 745 F.3d 634, 645 (3d Cir. 2014) (finding that county was liable for unlawful detention pursuant to ICE detainer).

by the Trust Act or other state law.³⁴ Accordingly, any requests from federal immigration authorities for access to individuals held by Illinois authorities should be viewed as requests, rather than obligations.³⁵

As discussed above, federal law permits – but does not require – only two circumstances where Illinois law enforcement may enforce federal immigration law: (1) pursuant to a 287(g) agreement;³⁶ or (2) when an individual has returned to the United States after being convicted of a felony and deported.³⁷ **Jurisdictions should understand that Illinois law has not authorized Illinois law enforcement to engage in enforcement of federal civil immigration law and that they may face civil liability for doing so.**

b. *Illinois law enforcement has no authority to arrest an individual solely based on information that the individual is undocumented.*

Generally, law enforcement officers cannot arrest an individual for violation of a state or federal law without a warrant unless state law has granted them authority to do so.³⁸ Illinois law permits arrest by Illinois law enforcement only if the officer has an arrest warrant, has reasonable grounds to believe a warrant has been issued or has reasonable grounds to believe that the individual is committing or has committed a criminal offense.³⁹

Being unlawfully present in the United States is not a criminal offense, and thus unlawful presence alone does not establish probable cause to find that an individual has committed an offense under Illinois law.⁴⁰ The fact that a person may be subject to deportation is not a lawful reason for arrest or detention without a court order, even if the person is subject to a deportation order based on the commission of a criminal offense.⁴¹ Further, as discussed above, Illinois law now prohibits the arrest of a person solely based on the person’s citizenship or immigration status.

³⁴ *Arizona*, 132 S. Ct. at 2509-10.

³⁵ *Moreno v. Napolitano*, 2016 WL 5720465 (N.D. Ill. Sept. 30, 2016); *Galarza v. Szalczky*, 745 F.3d 634, 645 (3d Cir. 2014); *Ortega v. U.S. Immigration & Customs Enforcement*, 737 F.3d 435, 438 (6th Cir. 2013); *Liranzo v. United States*, 690 F.3d 78, 82 (2d Cir. 2012); *United States v. Uribe-Rios*, 558 F.3d 347, 350 n. 1 (4th Cir. 2009); *United States v. Female Juvenile, A.F.S.*, 377 F.3d 27, 35 (1st Cir. 2004); *Giddings v. Chandler*, 979 F.2d 1104, 1105 n.3 (5th Cir. 1992).

³⁶ 8 U.S.C. § 1357(g) (Section 287(g) of the Immigration and Nationality Act).

³⁷ 8 U.S.C. § 1252c.

³⁸ *Miller v. United States*, 357 U.S. 301, 305 (1958) (noting that the lawfulness of a warrantless arrest for violation of federal law by state peace officers is “to be determined by reference to state law”).

³⁹ 725 ILCS 5/107-2.

⁴⁰ *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012) (“If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.”).

⁴¹ *Id.*; see also *Galarza v. Szalczky*, 745 F.3d 634, 641 (3d Cir. 2014) (“The [INA] does not authorize federal officials to command state or local officials to detain suspected aliens subject to removal.”); *Morales v. Chadbourne*, 793 F.3d 208, 217-18 (1st Cir. 2015) (new seizures as a result of an ICE detainer must be supported by probable cause).

Thus, without an arrest warrant issued by a judge, Illinois law bars Illinois law enforcement from arresting an individual on the sole basis that the person is unlawfully present in the United States.⁴² This is true even if an officer is aware that ICE has issued an administrative warrant for an individual. **Therefore, Illinois officers do not have legal authority to arrest or detain an individual based solely on the individual's immigration status and are in violation of Illinois law if they do so.**

c. Illinois law enforcement shall not arrest an individual solely based on an ICE administrative warrant.

Federal law does not authorize Illinois law enforcement officers to arrest an individual pursuant to an ICE administrative warrant and Illinois law now prohibits arrest by an Illinois law enforcement officer solely based on an ICE administrative warrant.⁴³ ICE administrative warrants are prepared by ICE employees, but are not approved or reviewed by a judge.⁴⁴ By themselves, ICE administrative warrants do not suggest that an individual has committed a criminal offense, nor do they constitute probable cause that a criminal offense has been committed.⁴⁵ Furthermore, administrative warrants issued by ICE authorize only U.S. Department of Homeland Security (DHS) or ICE agents to arrest the individual, not Illinois law enforcement. **Thus, any arrest by Illinois law enforcement solely based on an administrative warrant issued by ICE is not an arrest pursuant to a criminal warrant or a finding of probable cause and violates Illinois law.**⁴⁶

d. Illinois law enforcement shall not detain an individual pursuant only to a federal immigration detainer request.

Federal courts have concluded that ICE detainers are requests, and state and local law enforcement are not required to honor the requests. In fact, law enforcement agencies may be open to liability if they comply with such requests because ICE detainers do not establish individualized probable cause that would be sufficient justification for local law enforcement to detain an individual.⁴⁷ Furthermore, any detention of an individual after his or her normal release date is

⁴² *Arizona*, 132 S. Ct. at 2505.

⁴³ See *United States v. Toledo*, 615 F. Supp. 2d 453, 459 (S.D. W. Va. 2009) (discussing the sheriff's lack of authority to enforce an ICE administrative warrant).

⁴⁴ 8 U.S.C. § 1357; see also *U.S. v. Abdi*, 463 F.3d 547, 551 (6th Cir. 2006) (describing the process to obtain an ICE administrative warrant).

⁴⁵ *El Badrawi v. Dept. of Homeland Security*, 579 F. Supp. 2d 249, 276 (D. Conn. 2008); *United States v. Toledo*, 615 F. Supp. 2d 453, 459 (S.D. W. Va. 2009).

⁴⁶ Illinois law authorizes peace officers to arrest an individual only when a warrant has been issued for a criminal offense – not a civil offense. 725 ILCS 5/107-2.

⁴⁷ *Galarza v. Szalczynk*, 745 F.3d 634, 645 (3d. Cir. 2014); *Moreno v. Napolitano*, 2016 WL 5720465 (N.D. Ill. September 30, 2016) (holding that ICE's practice of issuing detainers without individualized determination of probable cause was unlawful).

considered a new arrest and must be based on probable cause that a crime has been committed.⁴⁸ As discussed above, unlawful presence in the United States alone does not constitute probable cause and is not a criminal offense.⁴⁹

An Illinois law enforcement agency is in violation of the Trust Act if it detains an individual beyond his or her normal release date based only on an ICE detainer request.⁵⁰ Further, an Illinois law enforcement agency must take actions to ensure it does not violate the Illinois and federal constitutional protections against unreasonable searches and seizures.⁵¹ **Any detention of an individual without a judicial warrant – including prolonging an initial detention – must be supported by probable cause that an individual committed a criminal offense, which is not satisfied by the existence of an ICE administrative warrant.**⁵²

e. Illinois law enforcement is permitted, but not required, to share information with federal immigration authorities.

Federal officials may request information from Illinois law enforcement agencies about individuals in their custody in order to enforce federal civil immigration laws.⁵³ This information may include names of individuals in custody, normal release dates, court dates, home address or other identifying information. Illinois law enforcement is not required to respond to these information requests.⁵⁴ Similarly, Illinois law enforcement agencies are not required to inquire about an individual's citizenship or immigration status or to collect this information.⁵⁵

While Illinois law enforcement and other government agencies are not prohibited from sharing or receiving citizenship information,⁵⁶ they are not required to do so.⁵⁷ Moreover, law enforcement policies and practices to share information about individuals in their custody may deter individuals from reporting information about a crime or appearing as a witness

⁴⁸ Ill. Const. 1970, art. I, § 6; U.S. Const., amend. IV.

⁴⁹ *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012).

⁵⁰ *Santos v. Frederick Cnty. Bd. Of Comm'r's*, 725 F.3d 451, 464-65 (4th Cir. 2013); *see also Villars v. Kubiatowski*, 45 F. Supp. 3d 791, 801-803 (N.D. Ill. 2014) (denying motion to dismiss claims against village police department for detaining individual post-bond); *Galarza v. Szalczynk*, 745 F.3d 634, 645 (3d. Cir. 2014) (finding that county was liable for unlawful detention pursuant to ICE detainer).

⁵¹ *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *Moreno v. Napolitano*, 2016 WL 5720465 (N.D. Ill. Sept. 30, 2016).

⁵² *Santos*, 725 F.3d at 464-65; *see also Villars*, 45 F. Supp. 3d at 801-03; *Galarza*, 745 F.3d at 645; *see also People v. Hyland*, 2012 IL App (1st) 110966 (finding that investigative alert was not sufficient to support probable cause for arrest).

⁵³ 8 U.S.C. § 1373.

⁵⁴ *Id.*; *see also Arizona v. United States*, 132 S. Ct. 2492, 2508 (2012) (noting that Congress has “encouraged the sharing of information about possible immigration violations”).

⁵⁵ Law enforcement should be aware that all fingerprint information submitted to the FBI for criminal background checks will be provided to ICE for comparison to its records.

⁵⁶ *See Ill. Public Act 100-0463, § 15(c)* (2017).

⁵⁷ *See Printz v. United States*, 521 U.S. 898, 935 (1997) (holding that 10th Amendment prohibits the federal government from commandeering state employees to administer federal scheme).

if these individuals are concerned that their information will be shared with ICE or other federal authorities.⁵⁸ Accordingly, such policies and practices may diminish the relationship between Illinois law enforcement and immigrant communities. Therefore, agencies should carefully consider the impact of sharing information with federal authorities on the community's perceptions of trust and confidentiality.

⁵⁸ See *City of New York v. United States*, 179 F.3d 29, 34 (2d Cir. 1999) (discussing police department interests in confidentiality of information).