DENNIS J. HERRERA, State Bar #139669
City Attorney
JESSE C. SMITH, State Bar #122517
Chief Assistant City Attorney
RONALD P. FLYNN, State Bar #184186
Chief Deputy City Attorney
YVONNE R. MERÉ, State Bar #173594
Chief of Complex and Affirmative Litigation
CHRISTINE VAN AKEN, State Bar #241755
TARA M. STEELEY, State Bar #231775
MOLLIE M. LEE, State Bar #251404
SARA J. EISENBERG, State Bar #269303
MATTHEW S. LEE, State Bar #295247
NEHA GUPTA, State Bar #308864
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4602
Telephone: (415) 554-4748
Facsimile: (415) 554-4715
E-Mail: brittany.feitelberg@sfgov.org

Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO, Plaintiff, vs. DONALD J. TRUMP, President of the United States, UNITED STATES OF AMERICA, JOHN F. KELLY, Secretary of United States Department of Homeland Security, JEFFERSON B. SESSIONS III, Attorney General of the United States, DOES 1-100, Defendants.	Case No. 3:17-cv-00485-WHO **SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CITY AND COUNTY OF SAN FRANCISCO'S MOTION FOR PRELIMINARY INJUNCTION** Date: April 14, 2017 Time: 2:00 p.m. Judge: Honorable William H. Orrick Dept: Courtroom 2 Date Filed: January 31, 2017 Trial Date: Not yet set

REQUEST FOR JUDICIAL NOTICE

Plaintiff City and County of San Francisco hereby respectfully requests, pursuant to Federal Rule of Evidence 201, that this Court take judicial notice of the following documents.

1. Attached hereto as **Exhibit A** is a true and correct copy of the U.S. Immigration and Customs Enforcement Policy No. 10074.2, entitled "Issuance of Immigration Detainers by ICE Immigration Officers" and issued on March 24, 2017. This policy is posted on the U.S. Immigration and Customers Enforcement official website, at https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf.

2. Attached hereto as **Exhibit B** is a true and correct copy of Form I-247A issued by the Department of Homeland Security and entitled "Immigration Detainer-Notice of Action." This form is posted on the U.S. Immigration and Customers Enforcement official website, at https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf.

3. Attached hereto as **Exhibit C** is a true and correct copy of the Department of Justice's press release dated March 27, 2017 and titled "Attorney General Jeff Sessions Delivers Remarks on Sanctuary Jurisdictions." This press release is posted on the U.S. Department of Justice official website, at https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions.

4. Attached hereto as **Exhibit D** is a true and correct copy of Whitehouse.Gov's press release dated March 27, 2017 and titled "Press Briefing by Press Secretary Sean Spicer, 3/27/2017, #29." This press release is posted on Whitehouse.Gov's website, at https://www.whitehouse.gov/the-press-office/2017/03/27/press-briefing-press-secretary-sean-spicer-3272017-29.

5. Attached hereto as **Exhibit E** is a true and correct copy of a letter sent by Daniel H. Ragsdale, the Acting Director of the United States Department of Homeland Security, to Representative Mike Thompson on February 25, 2014.

6. Attached hereto as **Exhibit F** is a true and correct copy of the Brief of the United States as Amicus Curiae in Support of Neither Party, filed before the Commonwealth of Massachusetts

Supreme Judicial Court in the case of the *Commonwealth of Massachusetts v. Sreynuon Lunn*, Case Number No. SJC-12276.

7. Attached hereto as **Exhibit G** is a true and correct of an article titled "Did Culberson Misfire when he took a shot at 'sanctuary city' funds?" This articled was posted on Houstonchronicle.com's website on March 18, 2017, updated March 19, 2017, at http://www.houstonchronicle.com/news/houston-texas/houston/article/Did-Culberson-misfire-when-he-took-a-shot-at-11011942.php.

8. Attached hereto as **Exhibit H** is a true and correct copy of the "Weekly Declined Detainer Outcome Report" issued by the Department of Homeland Security, U.S. Immigration and Customs Enforcement ("ICE"). This press release is posted on the ICE website, at https://www.ice.gov/doclib/ddor/ddor2017_02-04to02-10.pdf.

Each of these exhibits is a matter of public record and is therefore subject to judicial notice. Fed. R. Evid. § 201(b); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (a court may judicially notice matters of public record unless the matter is a fact subject to reasonable dispute).

Exhibits A, B, C, D, E, and H are judicially noticeable because government memoranda, bulletins, letters, statements and opinions are matters of public record appropriate for judicial notice. *See Brown v. Valoff*, 422 F.3d 926, 933 n.9 (9th Cir. 2005) (judicially noticing an administrative bulletin); *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (court may take judicial notice of records and reports of state administrative bodies), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 111 (1991); *Interstate Nat. Gas. Co. v. S. Cal. Gas. Co.*, 209 F.2d 380, 385 (9th Cir. 1953) (judicially noticing government agency records and reports).

Exhibits A, B, C, D, and H are also judicially noticeable because they are posted to official government websites. *See Daniels–Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (judicially noticing information contained on a government website); *Paralyzed Veterans of America v. McPherson*, No. C 06–4670 SBA, 2008 WL 4183981, at *5 (N.D. Cal. Sept. 9, 2008) (finding that courts commonly take judicial notice of information and documents on government websites, and citing cases from various jurisdictions).

Exhibit F is judicially noticeable because it is a court record from a proceeding that raises issues relevant to this litigation. *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (holding that a court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.")

Exhibit G is judicially noticeable because the statements of governmental officials contained within Exhibit G are not subject to reasonable dispute because the statements "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. § 201(b)(2).

Dated: March 29, 2017

DENNIS J. HERRERA
City Attorney
RONALD FLYNN
JESSE C. SMITH
YVONNE R. MERÉ
CHRISTINE VAN AKEN
TARA STEELEY
MOLLIE M. LEE
SARA J. EISENBERG
MATTHEW S. LEE
NEHA GUPTA

By: *_/s/ Sara J. Eisenberg_*
SARA J. EISENBERG
Deputy City Attorney

Attorneys for Plaintiff
CITY AND COUNTY OF SAN FRANCISCO

EXHIBIT A

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Policy Number 10074.2: **Issuance of Immigration Detainers by ICE Immigration Officers**

Issue Date: March 24, 2017
Effective Date: April 2, 2017
Superseded: Interim Policy No. 10074.1: *Detainers* (Aug. 2, 2010)
Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** This Directive establishes U.S. Immigration and Customs Enforcement (ICE) policy and procedures regarding the issuance of civil immigration detainers to federal, state, local, and tribal law enforcement agencies (LEAs). ICE issues detainers to federal, state, local, and tribal LEAs to provide notice of its intent to assume custody of a removable alien detained in federal, state, local, or tribal custody. The Department of Homeland Security's (Department or DHS) detainer authority, codified in section 287.7 of title 8 of the Code of Federal Regulations (C.F.R.), arises from the Secretary of Homeland Security's power under section 103(a)(3) of the Immigration and Nationality Act (INA) to provide regulations "necessary to carry out his authority," and from ICE's general authority to arrest and detain aliens subject to removal or removal proceedings, pursuant to sections 236, 241, and 287 of the INA. The use of immigration detainers, however, long pre-dates any reference to detainers in the statute or regulations.[1] In fact, the former Immigration and Naturalization Service first used the Form I-247 as early as 1952.

Detainers enable ICE to judiciously deploy its investigative, detention, and removal resources consistent with the immigration enforcement priorities of the Department and the executive branch of the U.S. Government. Detainers also allow ICE immigration officers to avoid the risks to public safety and officer safety associated with arrests outside the custodial environment.

2. **Policy.** It is ICE policy to ensure that ICE immigration officers exercise detainer authority in a manner consistent with all legal requirements and in a manner that ensures ICE's LEA partners may honor detainers.

2.1. The consolidated detainer form, Form I-247A (Immigration Detainer – Notice of Action), attached to this Directive shall be used as of the effective date of this Directive. Form I-247D (Immigration Detainer – Request for Voluntary Action), Form I-247N (Request

[1] *See, e.g.*, *Chung Young Chew v. Boyd*, 309 F.2d 857 (9th Cir. 1962); *Rinaldi v. United States*, 484 F. Supp. 916 (S.D.N.Y. 1977); *Slavik v. Miller*, 89 F. Supp. 575 (W.D. Pa. 1950), *aff'd*, 184 F.2d 575 (3d Cir. 1950), *cert. denied*, 340 U.S. 955 (1951); *Matter of Lehder*, 15 I&N Dec. 159 (BIA 1975).

for Voluntary Notification of Release of Suspected Priority Alien), and Form I-247X (Request for Voluntary Transfer), may no longer be issued. Detainers issued on prior versions of the detainer form remain active and need not be replaced with a Form I-247A. *See* Attachment 8.4 for guidance on how to complete the Form I-274A.

2.2. Only ICE immigration officers, including designated officers of a state or political subdivision of a state authorized to perform certain immigration officer functions under section 287(g) of the INA, may issue immigration detainers.

2.3. Regardless of whether a federal, state, local, or tribal LEA regularly cooperates with DHS immigration detainers, ICE immigration officers shall issue a detainer to the LEA for an alien in the LEA's custody after the alien is arrested for a criminal offense and the officer has probable cause to believe that the subject is an alien who is removable from the United States.

2.4. ICE immigration officers must establish probable cause to believe that the subject is an alien who is removable from the United States before issuing a detainer with a federal, state, local, or tribal LEA. Further, as a matter of policy, all detainers issued by ICE must be accompanied by either: (1) a properly completed Form I-200 (Warrant for Arrest of Alien) signed by an authorized ICE immigration officer; or (2) a properly completed Form I-205 (Warrant of Removal/Deportation) signed by an authorized ICE immigration officer.[2]

2.5. Except for circumstances in which the alien is detained in ICE custody at the time the detainer is issued, an ICE immigration officer shall not issue an immigration detainer to an LEA unless the LEA has arrested the alien for a criminal offense in an exercise of the LEA's independent arrest authority.[3] ICE Immigration officers shall not issue an immigration detainer for an alien who has been temporarily detained or stopped, but not arrested, by another LEA. This does not preclude the LEA from temporarily detaining an alien while an ICE immigration officer responds to the scene.

2.6. An ICE immigration officer may not issue a detainer based upon the initiation of an investigation to determine whether the subject is a removable alien. An ICE immigration officer may not establish probable cause of alienage and removability, for purposes of detainer issuance, solely based on evidence of foreign birth and the absence of records in available databases ("foreign-born-no match").

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[2] Although ICE maintains that this is not legally required, ICE is implementing this warrant measure as a nationwide policy in light of one district court's ruling that detention pursuant to an ICE detainer constitutes a warrantless arrest and that section 287(a)(2) of the INA only authorizes a warrantless arrest if there is reason to believe the alien will escape before an arrest warrant can be secured. *See Moreno v. Napolitano*, --- F. Supp. 3d ---, 2016 WL 5720465, at *8 (N.D. Ill. Sept. 30, 2016).

[3] Box 2 on Form I-247A (Immigration Detainer – Notice of Action) is used by ICE to ensure that an alien detained in ICE's custody is returned to ICE custody after being transferred to another LEA for a proceeding or investigation. Such detainers may be issued prior to the other LEA assuming custody of the subject of the detainer.

2.7. ICE immigration officers must promptly assume custody of an alien who is the subject of an immigration detainer. Further, ICE immigration officers should assume custody of an alien subject as soon as practicable, and as close as possible to the time at which the alien would otherwise have been released by the relevant LEA, but in no circumstances more than 48 hours after such time. If it becomes apparent that ICE cannot assume custody of the alien within 48 hours of when he or she would otherwise be released, the ICE immigration officer should immediately cancel the detainer.

2.8. In some cases, after issuing an immigration detainer for an individual in the custody of a federal, state, local, or tribal LEA, ICE may determine that it will not assume custody of the subject. In these cases, the ICE immigration officer must cancel the immigration detainer as soon as such determination is made.

2.9. As a matter of law, ICE cannot assert its civil immigration enforcement authority to arrest and/or detain a U.S. citizen.[4]

3. **Definitions.** The following definitions apply only for purposes of this directive.

3.1. **Detainer.** A notice that ICE issues to a federal, state, local, or tribal LEA to inform the LEA that ICE intends to assume custody of a removable alien in the LEA's custody.

3.2. **ICE Immigration Officer.** The term "ICE immigration officer" means Enforcement and Removal Operations (ERO) deportation officers and Homeland Security Investigations (HSI) special agents, including supervisory and managerial personnel who are responsible for supervising authorized immigration officers, as well as designated officers of a state or political subdivision of a state authorized to perform certain immigration officer functions under section 287(g) of the INA. *See* 8 C.F.R. § 287.7(b).

3.3. **Probable Cause.** The facts and circumstances within the officer's knowledge and of which they have reasonably trustworthy information that are sufficient in themselves to warrant a person of reasonable caution in the belief that an individual is a removable alien.

4. **Responsibilities.**

4.1. **All ICE employees** are responsible for complying with the policy and procedures set forth in this Directive.

4.2. **ICE immigration officers**, including designated immigration officers of a state or political subdivision of a state authorized to perform certain immigration officer functions under section 287(g) of the INA, are responsible for issuing and executing

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[4] ICE immigration officers must comply with requirements of ICE Policy No. 16001.2, *Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE* (Nov. 10, 2015), when issuing detainers. In particular, footnote 1 of that policy specifically applies to prior versions of the detainer "and/or any successor form serving the same or substantially similar" purpose.

immigration detainers in accordance with the policy and procedures set forth in this Directive.

4.3. **ICE ERO Assistant Directors, Deputy Assistant Directors, Field Office Directors (FODs), and the Directors of the National Criminal Analysis and Targeting Center, the Pacific Enforcement Response Center, and the Law Enforcement Support Center,** and their designees, as well as the **ICE HSI Assistant Director for Domestic Operations** and **ICE HSI Special Agents in Charge (SACs)** and their designees, are responsible for disseminating and ensuring compliance with this Directive.

5. Procedures.

5.1. Establishing Probable Cause.

As a matter of policy, a detainer must be supported by probable cause based upon one of the following four categories of information:

1) A final order of removal against the alien;

2) The pendency of ongoing removal proceedings against the alien, including cases in which DHS has issued a charging document and served the charging document on the alien;

3) Biometric confirmation of the alien's identity and a records match in federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks lawful immigration status or, notwithstanding such status, is removable under U.S. immigration law; and/or

4) Statements made voluntarily by the alien to an ICE immigration officer and/or other reliable evidence that indicate the alien either lacks lawful immigration status or, notwithstanding such status, is removable under U.S. immigration law.

An ICE immigration officer may not issue a detainer prior to establishing probable cause to believe that the subject is a removable alien. Further, an ICE immigration officer may not issue a detainer based upon the initiation of an investigation to determine whether the subject is a removable alien. The pendency of ongoing removal proceedings refers to cases in which DHS has issued a charging document and served the charging document on the alien. As a matter of policy, an ICE immigration officer may not establish probable cause of alienage and removability, for purposes of detainer issuance, solely based on evidence of foreign birth and the absence of records in available databases ("foreign-born-no match").

5.2. **Issuing an Immigration Detainer and Administrative Warrant**. All immigration detainers (Form I-247A Immigration Detainer – Notice of Action) must be accompanied by either Form I-200 (Warrant for Arrest of Alien) or Form I-205 (Warrant of Removal/Deportation).

1) If the subject of the detainer is a removable alien who is not yet subject to a final order of removal, the ICE immigration officer who issues the detainer shall attach a Form I-200 (Warrant for Arrest of Alien) to the detainer.

   a. The Form I-200 shall be issued by any of the supervisory immigration officials listed at 8 C.F.R. § 287.5(e)(2).

2) If the subject of the detainer is also the subject of a final order of removal, including where the alien is subject to reinstatement of removal under section 241(a)(5) of the INA, the ICE immigration officer who issues the detainer shall attach a Form I-205 (Warrant of Removal/Deportation) to the immigration detainer.

   a. The Form I-205 shall be issued by any of the supervisory immigration officials listed in 8 C.F.R. § 241.2(a)(1).

5.3. **Declined Immigration Detainers**. When ICE becomes aware that an LEA failed to honor an immigration detainer issued by ICE, the ICE immigration officer shall document the declined detainer in the ENFORCE Alien Removal Module (EARM) through the use of the detainer lift code of "A – Declined by LEA."

5.4. **Cancelling an Immigration Detainer.** If after issuing an immigration detainer ICE determines that it will not assume custody of the subject, the ICE immigration officer must cancel the immigration detainer.

1) Form I-247A shall be issued to the relevant LEA requesting cancellation of the detainer; and

2) All cancelled detainers shall be documented in EARM through the use of the detainer lift code of "L - Lifted", or using another case-specific lift code requiring the cancellation of the detainer (e.g. "D – Died", "N – Alien not subject to deportation").

6. **Recordkeeping.** ICE maintains records generated pursuant to this policy, specifically Forms I-247A (Immigration Detainer-Notice of Action), Forms I-200 (Warrant for Arrest of Alien) and Forms I-205 (Warrant of Removal/Deportation) in the Alien File.

7. **Authorities/References.**

7.1. Immigration and Nationality Act of 1952, Pub. L. No. 82-414, as amended (codified at 8 U.S.C. §§ 1101 *et seq.*).

7.2. 8 C.F.R. §§ 236.1, 241.2, 287.3, 287.5, 287.7.

7.3. *Moreno v. Napolitano*, --- F. Supp. 3d ---, 2016 WL 5720465 (N.D. Ill. Sept. 30, 2016).

7.4. Executive Order 13768, *Enhancing Public Safety in the Interior of the United States* (Jan. 25, 2017).

7.5. Memorandum from DHS Secretary John Kelly, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017).

7.6. ICE Policy No. 16001.2, *Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE* (Nov. 10, 2015).

7.7. ICE Policy No. 13001.1, *State Personnel Designated to Act as Immigration Officers for Immigration Enforcement Purposes* (Dec. 4, 2008).

8. Attachments.

8.1. Form I-247A (Immigration Detainer – Notice of Action).

8.2. Form I-200 (Warrant for Arrest of Alien).

8.3. Form I-205 (Warrant of Removal/Deportation).

8.4. ICE Guidance For Completing the Form I-247A.

9. No Private Right Statement. This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create or diminish any rights, substantive or procedural, enforceable at law or equity by any party in any criminal, civil, or administrative matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

EXHIBIT B

DEPARTMENT OF HOMELAND SECURITY (DHS)

IMMIGRATION DETAINER – NOTICE OF ACTION

Subject ID: Event #:	File No: Date:
TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (DHS 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.

SAMPLE

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.
- If the alien is transferred to another law enforcement agency, this detainer is to be relayed to the new agency with 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)

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 #: __________ Est. release date/time: __________ Date of latest criminal charge/conviction: __________

Latest offense charged/convicted: ______________________________________

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)

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) de EE. UU. ha emitido una orden de detención inmigratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto inmigratorio durante este período adicional de 48 horas, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmeselo al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).**

Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre encontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre encontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.**

AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903**

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

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EXHIBIT C

JUSTICE NEWS

Attorney General Jeff Sessions Delivers Remarks on Sanctuary Jurisdictions

Monday, March 27, 2017

Good afternoon. The Department of Justice has a duty to enforce our nation's laws, including our immigration laws. Those laws require us to promptly remove aliens when they are convicted of certain crimes.

The vast majority of the American people support this common-sense requirement. According to one recent poll, 80 percent of Americans believe that cities that arrest illegal immigrants for crimes should be required to turn them over to immigration authorities.

Unfortunately, some states and cities have adopted policies designed to frustrate the enforcement of our immigration laws. This includes refusing to detain known felons under federal detainer requests, or otherwise failing to comply with these laws. For example, the Department of Homeland Security recently issued a report showing that in a single week, there were more than 200 instances of jurisdictions refusing to honor Immigration and Customs Enforcement (ICE) detainer requests with respect to individuals charged or convicted of a serious crime. The charges and convictions against these aliens include drug trafficking, hit and run, rape, sex offenses against a child and even murder.

Such policies cannot continue. They make our nation less safe by putting dangerous criminals back on our streets.

We all remember the tragic case of Kate Steinle, the 32-year-old woman who was shot and killed two years ago in San Francisco as she walked along a pier with her father. The shooter, Francisco Sanchez, was an illegal immigrant who had already been deported five times and had seven felony convictions.

Just eleven weeks before the shooting, San Francisco had released Sanchez from its custody, even though ICE had filed a detainer requesting that he be kept in custody until immigration authorities could pick him up for removal. Even worse, Sanchez admitted that the only reason he came to San Francisco was because of its sanctuary policies.

A similar story unfolded just last week, when Ever Valles, an illegal immigrant and Mexican national, was charged with murder and robbery of a man at a light rail station. Valles was released from a Denver jail in late December, despite the fact that ICE had lodged a detainer for his removal.

The American people are justifiably angry. They know that when cities and states refuse to help enforce immigration laws, our nation is less safe. Failure to deport aliens who are convicted for criminal offenses puts whole communities at risk – especially immigrant communities in the very sanctuary jurisdictions that seek to protect the perpetrators.

DUIs, assaults, burglaries, drug crimes, gang crimes, rapes, crimes against children and murders. Countless Americans would be alive today – and countless loved ones would not be grieving today – if the policies of these sanctuary jurisdictions were ended.

Not only do these policies endanger the lives of every American; just last May, the Department of Justice Inspector General found that these policies also violate federal law.

The President has rightly said that this disregard for the law must end. In his executive order, he stated that it is the policy of the executive branch to ensure that states and cities comply with all federal laws, including our immigration laws.

The order also states that "the Attorney General and the Secretary [of Homeland Security] . . . shall ensure that jurisdictions that willfully refuse to comply" with the law "are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary."

Today I am urging all states and local jurisdictions to comply with all federal laws, including 8 U.S.C. Section 1373. Moreover, the Department of Justice will require jurisdictions seeking or applying for Department grants to certify compliance with Section 1373 as a condition for receiving these awards.

This policy is entirely consistent with the Department of Justice's Office of Justice Programs (OJP) guidance issued last July under the previous administration. This guidance requires state and local jurisdictions to comply and certify compliance with Section 1373 in order to be eligible for OJP grants. It also made clear that failure to remedy violations could result in withholding of grants, termination of grants, and disbarment or ineligibility for future grants.

The Department of Justice will also take all lawful steps to claw-back any funds awarded to a jurisdiction that willfully violates Section 1373.

In the current fiscal year, department's OJP and Community Oriented Policing Services anticipate awarding more than $4.1 billion dollars in grants.

I urge our nation's states and cities to consider carefully the harm they are doing to their citizens by refusing to enforce our immigration laws, and to re-think these policies. Such policies make their cities and states less safe, and put them at risk of losing valuable federal dollars.

The American people want and deserve a lawful immigration system that keeps us safe and serves our national interest. This expectation is reasonable, and our government has a duty to meet it. And we will meet it.

Speaker:
Attorney General Jeff Sessions

Office of the Attorney General

Updated March 28, 2017

EXHIBIT D

The White House

Office of the Press Secretary

For Immediate Release March 27, 2017

Press Briefing by Press Secretary Sean Spicer, 3/27/2017, #29

James S. Brady Briefing Room

1:34 P.M. EDT

MR. SPICER: Hi, guys. Good afternoon. I hope everyone had a great weekend, seriously. It's Monday, so I brought a special guest.

First, I'd like to have the Attorney General come up to the podium to make an announcement regarding immigration enforcement with respect to sanctuary cities. When the Attorney General is done speaking, we'll have time for a couple questions and then I'll continue with the briefing. So if your question is not germane to sanctuary cities, keep your hand down and we'll get to it after we go through the events of the day.

So, with that, Attorney General Sessions, come on up.

ATTORNEY GENERAL SESSIONS: Thank you, Sean. The Department of Justice has a view to enforce our nation's laws, including our immigration laws. Those laws require us to promptly remove aliens when they are convicted or detained of certain crimes. The vast majority of American people support this commonsense requirement. According to one recent poll, 80 percent of Americans believe that cities that arrest illegal immigrants for crimes should be required to turn them over to immigration authorities. Unfortunately, some states and cities have adopted policies designed to frustrate this enforcement of immigration laws. This includes refusing to detain known felons on the federal detainer request, or otherwise failing to comply with these laws.

For example, the Department of Homeland Security recently issued a report showing that in a single week, there were more than 200 instances of jurisdictions refusing to honor ICE detainer requests with respect to individuals charged or convicted of a serious crime. The charges and convictions against these aliens included drug-trafficking, hit-and-run, rape, sex offenses against a child, and even murder. Such policies cannot continue. They make our nation less safe by putting dangerous criminals back on the streets. We all remember the tragic case of Kate Steinle, the 32-year-old woman who was shot and killed two years ago in San Francisco as she walked along a pier with her father. The shooter, Francisco Sanchez, was an illegal immigrant who had already been deported five times and had seven felony convictions.

Just 11 weeks before the shooting, San Francisco had released Sanchez from its custody, even though Immigration and Customs Enforcement officers had filed a detainer requesting that he be held in custody until immigration authorities could pick him up for removal. Even worse, Sanchez admitted the only reason he came to San Francisco was because it was a sanctuary city.

A similar story unfolded just last week, when Ever Valles, an illegal immigrant and a Mexican national was charged with murder and robbery of a man at a light rail station. Valles was released from a Denver jail in late December, despite the fact that ICE has lodged a detainer for his removal.

The American people are not happy with these results. They know that when cities and states refuse to help enforce immigration laws, our nation is less safe. Failure to deport aliens who are convicted of criminal offenses puts whole communities at risk, especially immigrant communities in the very sanctuary jurisdictions that seek to protect the perpetrators.

DUIs, assaults, burglaries, drug crimes, gang rapes, crimes against children, and murderers -- countless Americans would be alive today and countless loved ones would not be grieving today if these policies of sanctuary cities were ended. Not only do these policies endanger lives of every American -- just last May, the Department of Justice inspector general found that these policies also violate federal law.

The President has rightly said, disregard for the law must end. In his executive order, he stated that it is the policy of the executive branch to ensure that states and cities comply with all federal laws, including all immigration laws.

Today, I'm urging states and local jurisdictions to comply with these federal laws, including 8 U.S.C. Section 1373. Moreover, the Department of Justice will require that jurisdictions seeking or applying for Department of Justice grants to certify compliance with 1373 as a condition of receiving those awards.

This policy is entirely consistent with the Department of Justice's Office of Justice Program's guidance that was issued just last summer under the previous administration. This guidance requires state and local jurisdictions to comply and certify compliance with Section 1373 in order to be eligible for OJP grants.

It also made clear that failure to remedy violations could result in withholding grants, termination of grants, and disbarment or ineligibility for future grants.

The Department of Justice will also take all lawful steps to claw back any funds awarded to a jurisdiction that willfully violates 1373. In the current fiscal year, the Department of Justice's Office of Justice Program and Community Oriented Policing services anticipates awarding more than $4.1 billion in grants.

I strongly urge our nation's states and cities and counties to consider carefully the harm they are doing to their citizens by refusing to enforce our immigration laws, and to rethink these policies. Such policies make their cities and states less safe -- public safety, as well as national security, are at stake -- and put them at risk of losing federal dollars.

The American people want and deserve a lawful system of immigration that keeps us safe, and one that serves the national interest. This expectation is reasonable, just, and our government has the duty to meet it, and we will meet it.

Thank you.

Q In Montgomery County, right up the road, there was a rape in Maryland at Rockville High School. Has anyone from the Department of Justice had any conversations with anyone in Montgomery County or Rockville, as they describe themselves as a sanctuary county and city? And there's also a boatload of federal government in Montgomery County.

ATTORNEY GENERAL SESSIONS: Well, you know, Maryland is talking about a state law to make the state a sanctuary state. The governor is opposed to that, I'm glad to hear. That would be such a mistake. I would plead with the people of Maryland to understand that this makes the state of Maryland more at risk for violence and crime. It is not good policy. And as a former prosecutor for many years in state and federal law in jurisdictions, I just know the historic relationship different federal agencies have with regard to honoring detainers. It's just a fundamental principle of law enforcement that if you have a person arrested, and another jurisdiction has a charge, then they file a detainer. And when you finish with the prisoner, you turn them over to the next jurisdiction for their adjudication. That is why it should be done --

MR. SPICER: Major.

Q Mr. Attorney General, so listening to you carefully, it sounds like you're applying the standards and the policy that the Obama administration put forward on compliance with underlying Justice Department rules. Are you taking any additional steps? And have you asked the President to maybe talk about other federal funds that are not necessarily under your control as a way to punish sanctuary cities or states?

ATTORNEY GENERAL SESSIONS: Well, that's a good question. What I'm saying today is that essentially the policies of the Obama administration that were issued last July make clear that you should not be receiving certain federal funds if you're not in compliance with 1373. We believe that grants in the future could be issued that have additional requirements, as every grant that's being issued in America today usually has a requirement that if you qualify for this grant, you have to meet certain requirements. So we'll be looking at that in the future, and we'll continue to pursue it. But fundamentally we intend to use all the lawful authority we have to make sure that our state and local officials, who are so important to law enforcement, are in sync with the federal government.

Q Some officials in cities, for example -- bigger cities -- have said, despite the lack of federal funding, they will continue to be sanctuary cities; that they don’t care that they're losing money, essentially. What recourse does the Department of Justice have in those cities that look at what you're doing and say, we don’t care, we're going to continue to implement this policy?

ATTORNEY GENERAL SESSIONS: Well, that's very disheartening, but I hope that the American people and their constituents in their own cities will communicate with them. And as we continue a dialogue and a discussion, and as we continue to ensure that monies that go for law enforcement only go to cities who are participating in an effective, collegial, cooperative way with the federal government, that that would also send a message. We have simply got to end this policy. Thank you all.

MR. SPICER: Okay. You guys ready to continue?

Q Yes.

MR. SPICER: Good. Before I get into today's schedule, I wanted to read -- I know there's been some interest in the State Department's statement regarding the arrest of hundreds of protestors -- peaceful protestors -- that occurred in Russia.

The statement that the State Department put out says:

"The United States strongly condemns the detention of hundreds of peaceful protestors throughout Russia on Sunday. The detention of peaceful protestors, human rights observers, and journalists is an affront to essential democratic values. We are troubled to hear of the arrest of the opposition leader upon arrival at the demonstration, as well as the police raids on the anti-corruption organization he heads. The United States will monitor the situation, and we call on the government of Russia to immediately release all peaceful protestors. The Russian people, like people everywhere, deserve a government that supports an open marketplace of ideas, transparent and accountable governance, equal treatment under the law, and the ability to exercise their rights without fear of retribution."

Now, with respect to events for the day, this morning, after receiving his daily intelligence briefing, the President participated in a roundtable with women small business owners. The President is hosting a group of women business owners as part of the White House's full calendar of Women's History Month events.

At the roundtable this morning, Vice President Pence, SBA Administrator McMahon joined with other senior administration officials to hear from these amazing female entrepreneurs and small business leaders about their firsthand experiences, successes, and challenges. As the President said, "Empowering and promoting women in business is an absolute priority in the Trump administration because I know how crucial women are as job-creators, role models, and leaders all throughout our communities.

The women in attendance this morning have incredible stories, including many who have started businesses from scratch with very limited resources, and, through hard work and determination, turned their dreams into reality. Between them, they provide hundreds of jobs to Americans across the country. The President is dedicated to continuing to remove the unique barriers that women face in our economy, including access to capital, markets, and networks. This administration will continue to advocate for policies that support working family, including a national initiative to promote women business leaders and entrepreneurs that his daughter, Ivanka, is helping to lead.

In honor of Women's History Month, the White House has been hosting events all throughout March. Just to name a few, the Centers for Medicaid and Medicare Systems Administrator Verma held a roundtable with Women in Healthcare, which the President attended. The First Lady held a Women's Empowerment lunch on International Women's Day. Earlier this month, Second Lady Karen Pence joined women from all five military branches for lunch at Fort Meade, and last week hosted military women at the Vice President's residence to thank them for their service. Under President Trump, the American economy is a place for everyone, regardless of their gender, to thrive.

Following the roundtable, the President had lunch with the Vice President and Secretary of State Tillerson. And at three o'clock, the President will sign House Joint Resolutions 37, 44, 57, and 58 -- all of which use the powers of the Congressional Review Act to roll back job-killing rules. Before this administration, only one time in the nation's history had a President ever signed a bill that used the Congressional Review Act to cancel a federal regulation. In just his first 66 days as President, he will have signed six resolutions to eliminate unnecessary and burdensome rules.

House Joint Resolution 37 rolls back the so-called "blacklisting" rule, which manufacturers identified during their meeting with the President as one of the most significant threats to growing American businesses and hiring more American workers. The rule simply made it too easy for trial lawyers to go after American companies and American workers who contract with the federal government. The President saw that workers, taxpayers, and businesses were the ones who truly suffered under this rule, and he is glad to be signing legislation to eliminate it.

House Joint Resolution 45* [44], 57, and 58 cancel federal power grabs that took decision-making away from the states and local governments who know the unique challenges of their own populations. The President firmly believes that Washington is not always the solution to these problems, and that these bills return the power to the people by putting more decision-making in the hands of states.

House Joint Resolution 44 removes a Bureau of Land Management rule, known as "Planning 2.0," that would have centralized federal and land management in Washington, diluting the concerns of local citizens who have a right that is protected by law to be involved in this decision-making process.

H.J. Res. 57 and 58 eliminate the Department of Education regulations which limits states' flexibility in how they assess the performance of schools and teacher preparation and programs. Removing these additional layers of bureaucracy will make it easier for parents, teachers and communities, and state leaders to address the needs of their students.

The President will continue to work with Congress and the rest of the federal government until every unnecessary regulation that stands in the way of success for American business and American people is taken off the books.

Additionally, the President spoke with German Chancellor Merkel and Indian Prime Minister Modi earlier today to congratulate them on their parties' success in recent elections. We'll have readouts on those calls a little later for you both.

The President also will announce the establishment of the Office of American Innovation. The Office of American Innovation will apply the President's "ahead of schedule and under budget" mentality to a wide number of government operations and service, enhancing the quality of life for all Americans. The office will have a particular focus on technology and data, hearing back from leaders in the industry.

As some of its first priorities, the office will focus on modernizing the technology of every federal department, identifying transformational infrastructure projects, and reimagining the

VA system so that it can better serve our nation's heroes. The effort will be led by Assistant to the President and Senior Adviser Jared Kushner.

Tomorrow, the President will sign an executive order to strengthen the nation's energy security by reducing unnecessary regulatory obstacles that restrict the responsible use of domestic energy resources. This order will help keep energy and electricity affordable, reliable and clean in order to boost economic growth and job creation.

And finally, before I came out today, Senate Democrats continued their obstruction to the President's nomination of Judge Neil Gorsuch to the Supreme Court with the Judiciary Committee seeking a one-week postponement on its decision.

Over the weekend, Senate Minority Leader Chuck Schumer defended his decision to mount a filibuster against the President's unquestionably qualified nominee. If Senator Schumer gets his way, this would be the first successful filibuster against a Supreme Court nominee in American history. He argued, quite misleadingly, that the Senate has "required" a 60-vote threshold of "every" Supreme Court nominee. That's simply not true.

And as I've said before, only three Supreme Court Justices have faced a filibuster in the last half of the century. Senator Schumer cited four justices confirmed under President Bush and Obama, but in fact, among those four, only one faced an attempted filibuster -- that was Justice Samuel Alito. And it was President Obama who, then as a senator, voted to filibuster Justice Alito, and later publicly expressed his regret for that.

The fact is, an attempted filibuster of a Supreme Court nominee is rare, and to do so in this context, with such an eminently qualified and brilliant judge, is nothing short of obstructionism. That's why Senator Pat Leahy, the former Democratic Chairman of the Senate Judiciary, said he is "not inclined to filibuster," even if he ultimately may not vote to confirm the Judge.

The fact that the former Chairman of the Judiciary Committee won't stand by the Minority Leader exposes the Leader's efforts as nothing but obstructionism that undermines decades of Senate tradition. Through four days of extensive hearings, Judge Gorsuch demonstrated his judicial philosophy, his sterling academic credentials, and a brilliant legal mind. He deserves a fair up or down vote.

And with that, I'd be glad to take a few of your questions. Jonathan.

Q Is the President serious about working with Democrats going forward after what happened with healthcare?

MR. SPICER: Absolutely. In fact, starting Friday afternoon through late yesterday, he's received a number of calls, as well as other members of the senior staff that had been working on healthcare, from members of both sides, saying that they would like to work together, offer up ideas, and had suggestions about how to come to resolution on this and get to a House vote on this.

Q But --

Q But wouldn't this require a --

MR. SPICER: I'm sorry, John, this isn't a free-for-all. Jonathan is asking the question.

Q But wouldn't this require a serious course correction for the White House? I mean, the President branded Chuck Schumer a "clown," worked entirely with Republicans on this bill. Wouldn't this require a serious change of course for the President?

MR. SPICER: To some degree, sure. And I think the President talked about that. I think we learned a lot through this process. I think we're obviously looking at ways that we can improve not only how we handle healthcare, but other things -- how we do everything. And I mentioned it to some of you in the course of things. I think one of the traits of a successful organization is to always examine how you do things, but I think that there's been a lot of outreach from members of both sides with ideas, and the President is willing to listen to these individuals. And if they can come to a resolution on a way forward, obviously we're willing to listen and to move forward.

But there are a lot of folks that came forward with these ideas. And with all due respect, to the beginning of your question, I don't think it's a one-way street some of the comments that have been made. I think some of the Democrats. who now say they weren't involved, early on in the process said that they wanted nothing to do with this process, there was no way that they would engage in any discussion to repeal. So I think it's a two-way street, and I think that we have been willing to listen to folks and their ideas. And the President's advice is that if we can come up with resolution on a way to move forward, we'll certainly entertain that.

Q Where does the buck stop for this failure? Does the buck stop --

MR. SPICER: Just so we're clear, look, we're at the beginning of a process. I don't think we've seen the end of healthcare. As most people have noted, I think the Obama administration, from beginning to end, it ultimately took about 17 months and went through a series of fits and starts. And it wasn't until Scott Brown was elected, denying them the 60th vote in the Senate, that they finally jammed something through. And, frankly, a lot of the reason that the Secretary of Health and Human Services has some of the powers that they do is because they had to jam it through. But there were several failures, when Obamacare went through, during the process. And ultimately, they tried to go through a single-payer process, and they got rebuffed on that by some of their own members.

So, look, we're not saying it's the end of healthcare. But I think that we are looking to look for a way forward, and I think that a lot of the members -- and again, on both sides of the aisle --

have reached out not just to the President, but to members of the team, willing to share some ideas both that will make -- that they think would make the bill stronger. But ultimately, the goal is to get to 216 and potentially 218, depending on where we are with special elections.

And so we're going to look to see where we can get those 218 votes. And there may be other opportunities to work with people across the aisle that get us to 218. But that's the name of the game, and we're going to continue to pursue that.

Jim.

Q Sean, the last Congress passed significant tax reform, it took about five years, and that was 30 years ago, in 1986. After the failure or defeat of the American Health Care Act on an issue where there was broad GOP consensus, what makes the President think he can pass significant tax reform this year?

MR. SPICER: Well, I think it's been 30 years. I think people -- we have a series of -- we have an economy that's evolved, especially in the technology area; they just made a lot of things change. And I think our tax code is outdated. And, frankly, on the business side, we're uncompetitive. There's a reason that companies are leaving America to go to other places, because the same reason sometimes companies move from state to state. Our corporate and regulatory system has become unattractive for a lot of companies that want to either manufacture here, grow here, or begin here, or want to return jobs here.

I think the President recognized that, and business leaders from around the country. It's not a partisan issue. I mean, you go out to the tech sector, out in Silicon Valley in particular, there's a lot of these companies out there that admittedly weren’t with the President during the election, or continued not to be, and I think recognized that we are not as competitive as we can be when you consider the tax and regulatory climate of other countries around the world. And we need to be more competitive.

And then I think you look at the individual side of the House, and I think especially when you talk to middle-income Americans, especially in the context of health premiums skyrocketing up, they recognize that they need some relief. And so we've got to do what we can to address that.

Jon-Christopher.

Q Thank you. Historically, since healthcare has beguiled many Presidents, all the way to Harry Truman, and certainly when Hillary Clinton came to Washington, she went to the Hill and thought that she could get it done. I'm sure there are many lessons you can learn from previous Presidents and perhaps previous First Ladies. Has the President thought about reaching out to Hillary and finding out how she maneuvered and some of the best practices or some of the pitfalls that she came to?

MR. SPICER: And I think that you know -- I mean, he's met with Dr. Zeke Emanuel and others -- it's not been a -- he's reached out to several people throughout this process to gauge both their policy ideas and strategy ideas. And I think the President noted on Friday afternoon that we learned a lot, on several fronts, about strategically how to handle this, as well as some of the members that we thought we would have with us. And we're reexamining that on a variety of bases.

Margaret.

Q Thank you. We got some guidance from the White House earlier about Chairman Nunes's meeting on the White House grounds, involving (inaudible) any idea that questions about the meeting should be referred to the Committee Chairman. But I wanted to ask a slightly different question, which is, does the White House know now what absolutely happened? Do you have issues with the idea that someone, perhaps in the executive branch, shared information from the White House grounds without you knowing about it? Or are you investigating this? Do you believe there was a leak? Or was it, in fact, someone on the White House staff or NSC staff, or on loan to either, who provided the information and therefore it's not leaked?

MR. SPICER: So, obviously, all of what I know has been available through public comments. I know that Chairman Nunes confirmed that he was on White House grounds Tuesday. And, frankly, any questions regarding who he met with or why he was here should be referred to him. I've seen some of the comments that he's made to your outlet in particular about who he met with. And I would refer you to his comments that he's made. I'm not going to get into who he met with or why he met with them. I think that's something that he had made very clear, and I'll let him answer it. He is the one who has discussed what he is reviewing. And so I will leave it up to him and not try to get in the middle of that.

Q Can I just follow up, just to close the circle on it? I'm asking a slightly different question, or at least I'm trying to ask a slightly different question, which is, does the White House know what happened now, beyond public accounts? And are you satisfied that you don't have an inappropriate leak in the executive branch?

MR. SPICER: No, we're not concerned about that. I know that he is -- again, everything that I know about what he has done is through public reports that he has made on the record to different folks when he said he has multiple sources, he had met with different folks to gather things as part of his review of the situation. And so all I know, and what I'm willing to communicate, is what has been made available through on-the-record comments that he has made.

Q But to come to White House grounds you have to be cleared --

MR. SPICER: No, not necessarily. I don't know that members of Congress need to be cleared.

Q Wouldn't the White House want to know?

MR. SPICER: Again, I think there's a difference. He's doing a review, and it's not something that we're going to necessarily get in the middle of or get in the way of. Part of it is to let him review and have conversations and look at things that he thinks are relevant.

Q Sean, a clarification on your answer to Margaret. You said, I don't know that members of Congress have to get cleared in. There was some question about that. Who in the White House signed him in, essentially, to be able to --

MR. SPICER: I don't know that you have to. I'll be glad to check on that. I'm not sure that that's how that works. But I will follow up on that point.

Q Okay, and my second question is -- and it's related to this -- I understand that you're not going to speak about some of the swirl surrounding this issue with Chairman Nunes. Does the White House believe that he can still lead an impartial investigation? Or would the administration support some of these calls now for an independent committee to investigate this?

MR. SPICER: First of all, I would question what "this" is. Because as I've mentioned countless times from this podium, there's two issues at hand -- there's multiple. Number one, there's any action with respect to Russia itself. And every single person that's been briefed by Director Comey in particular, and the FBI, has said there's nothing there. What he is looking into are two things that we are aware of because of the pleas that we have made. One is the leaks of classified and other information that have come out. And two is whether or not there has been people that have been unmasked, and whether or not there was surveillance -- I don't know why -- we stand by the original request that was made. And I think Director Comey, in open testimony the other day, talked about what the FBI is looking into.

So I think we have a lot of people looking into this whole situation.

Q Will the administration pursue, will the White House pursue a leak investigation into whoever is giving Chairman Nunes this information, if it's in the executive branch?

MR. SPICER: At this point, we're letting his -- the review of this situation proceed. And we can address that after he decides to be clear about that.

Q Why is this leak okay, but other leaks are not?

MR. SPICER: I think there's a difference between a leak and someone pursuing a review of a situation that they have determined. There's a difference between a leak -- someone leaking out to reporters for nefarious -- to take classified information and share it with people who aren't cleared. Chairman Nunes is cleared; he's the Chairman of the Intelligence Committee. Someone who is cleared to shared classified information with somebody else cleared is not a leak.

Zeke.

Q I have two for you. Just a quick housekeeping note. At the beginning of the briefing, you read out that the State Department stated on the protests and arrests in Russia. Does that reflect the White House's views?

MR. SPICER: That reflects the view of the United States government.

Q Okay, just wanted to clarify that. And secondly, back on -- you mentioned there were lessons learned off of what went down last week, the last several weeks, around healthcare. Can you give us some specifics on what some of those lessons are in terms of the President talked a lot about he learned a lot about loyalty, I think is one of the lines he stated on Friday? Does he believe that some members of his party are no longer loyal to him? Will you go through what are some of the lessons that --

MR. SPICER: No, I'm not going to detail, go through -- I mean, obviously this is an internal thing. But I will say that we look at things like -- everything from who we met with and when we met with them, to whether or not we should have -- how everything was rolled out and what organizations were met with, what commitments were met and when. But there's a lot that goes into this. And you look at whether or not that's applicable to another situation, whether that's unique. But obviously, yeah, you do look at some of the individuals that you met with, both in terms of timing, in terms of commitment, in terms of substance, and evaluate just the process itself, but then also, to some degree, the individuals and whether or not that is someone that --

Q Who's leading that review?

MR. SPICER: There's several folks. Again, it depends on the aspect of it. There's a legislative affairs team, there's a public policy team, there's a comms aspect to this. But we all internally talk about what went well, what didn't. And we do that not just with the bad, but the good.

I mean, I think Jonathan asked it somewhere at the beginning, but I think most organizations -- whether or not you do something really well or not as well -- it's usually incumbent upon you to think, what did we do well so that for things that we did really well, we sustain those kinds of aspects of something -- because there's always something to improve -- and even when you don't do as well. But there's part of things that you did that you did well and you don't want to throw the baby out with the bath water. So there's an ongoing piece to this.

Major.

Q Just a quick follow-up on Chairman Nunes, and then I have a question about Jared in a second. So, yes, members of Congress may not need to be cleared in, but to get access to a SCIF, I do believe that requires some cooperation from the executive branch, because there are intelligence places on Capitol Hill that are secure, that his meeting could have taken place. So it creates the impression that Chairman Nunes came over here and, with some degree of cooperation with this White House, was able to carry out this meeting and then make the announcement that he did, which is perceived by some -- most of them Democrats, I'll grant you that -- that it was trying to be helpful to this President and this administration. So it appears there was some degree of cooperation in this process that the White House granted Chairman Nunes, making it not just an investigative action, but a cooperative one.

MR. SPICER: Right. So I would refer you to two things. Number one, we've asked both of these entities, both the House and the Senate Intelligence Committees, to undertake this review. So it is partially at our request that they're looking into this.

Number two, based on the public comments that he made to Margaret's organization, he has said, from my understanding, on the record, that he did not meet with White House staff. So, again, I think you're trying to making something that he -- is himself, from what I've read, not actually been the case.

Q That's not what I asked you. I asked you about cooperation to have access to a SCIF, which is something that has to be carried out with your --

MR. SPICER: I understand. I will be glad to take a look at that and figure out whether or not that is an accurate statement or not.

Q Okay. Let me ask you about Jared. There is an understanding that's trying to be worked out, as we understand it, between Jared and the Senate Intelligence Committee. Is that a testimony? Is that something that the committee has requested? Has he volunteered? Does he believe he has something to explain to that committee and, more broadly, the American public about what he did on behalf of the transition with whom he met with, and some of the meetings that he took that are raising questions about Russia and folks that he met with that are outside of diplomatic channels but have other aspects to their Russian business deals that may cause some stir?

MR. SPICER: So, throughout the campaign and the transition, Jared served as the official primary point of contact with foreign governments and officials until we had State Department officials up. Once we assumed --

Q (Inaudible) request?

MR. SPICER: That's correct. And so given this role, he volunteered to speak with Chairman Burr's committee, but has not received any confirmation regarding a time for a meeting or anything.

Q And is this going to be a private meeting, or is this going to be --

MR. SPICER: I don’t know. Again --

Q What is he trying to accomplish with that?

MR. SPICER: I think based on the questions that surround this, he volunteered to go in and sit down with them and say, hey, I'm glad to talk about the role that I played and the individuals I met with. But again, remember, given the role that he played both during the campaign and during the transition, he met with countless individuals. That was part of his job. That was part of his role. And he executed it completely as he was supposed to.

Q And so he doesn't believe he owes the American public an explanation?

MR. SPICER: For what? Doing his job?

Q I'm just asking.

MR. SPICER: But you're acting as though there's something nefarious about doing what he was actually tasked to do.

Q Well, it's not every day that someone in a senior position like Jared's volunteers to go talk to the Senate Intelligence Committee about an investigation dealing with meddling by a foreign power in an American election.

MR. SPICER: And I think based on the media frenzy around this, he --

Q I'm just asking.

MR. SPICER: And I'm answering it. And I'm just saying to you that based on the media frenzy that existed around this, he volunteered to make sure that they -- he said, hey, we've made some contacts, I'd be glad to explain them, let me know if you'd like to talk. Plain and simple.

Q Just to be clear, just to kind of follow up on what everyone has been asking about Chairman Nunes -- so the White House does not -- does the White House have knowledge of the information that Chairman Nunes received when he came to the White House the first time? And if that's the case, or if that's not the case, is your position that the White House is not going to look into where he got the information from or who gave him the information until his investigation is complete?

MR. SPICER: I think that -- I'm not aware of where he got it from. I know in his public statements he's talked about having multiple sources. And so I don't know how he derived the conclusion that he did. And I think that at this point, the goal would be to wait until the review that he is undertaking is completed.

Kaitlan.

Q Why would Nunes need to brief the President on documents he viewed on White House grounds?

MR. SPICER: Because that's a big assumption that you're making that that's the only thing. As I said just a second ago, he had multiple sources on multiple topics. We don't know what he briefed him on in its totality. And so to jump to that conclusion is, frankly, irresponsible.

Q One more question. When will the White House resume releasing visitor logs?

MR. SPICER: We're reviewing that now.

Alexis.

Q Just to follow up -- I have two questions. One is on taxes. But last week you were advising the press corps that it didn't make sense for Nunes to come to the White House to brief the President on something that he had obtained from the White House, from the administration. So my question to you is -- I know what you just said, but can you say factually, absolutely flatly, that it is not possible that Chairman Nunes came to brief the President on something that he obtained from the White House or the administration?

MR. SPICER: I can't say 100 percent that I know anything what he briefed him on. What I can tell you through his public comments is that he has said that he had multiple sources that he came to a conclusion on. So to the degree to which any of those sources weighed on the ultimate outcome of what he came to a decision on, I don't know. And that's something that, frankly, I don't even know that he discussed with the President.

Q So it's possible? As far as you know right now, it's possible?

MR. SPICER: Anything is possible.

Q Okay. Here's my question on taxes. The President has said in the past that he thought maybe tax reform would flow over into 2018 -- calendar year 2018. And we know from the President's admiration of the 1986 tax reform, that took more than two years. Can you answer two questions about tax reform? Does the President anticipate that it will take that long, going into 2018 or beyond? And who is going to write the tax legislation? Who is going to devise the plan that the President wants to put his name on?

MR. SPICER: Well, so on the first one, I know that Secretary Mnuchin has talked about August as a target date. And I think it depends. I mean, as you point out, these are big things. There's a lot of groups that are going to want a ton of input because of the very nature that it's been 30 years. But I think part of this is going to be dependent on whether -- the degree to which we can come to consensus on a lot of big issues. But I know that we have a goal and it will depend on a lot of these issues, both on the corporate side and on the individual side, how that process evolves.

So to predict it -- I know the Secretary would like to have it done. He'll play a huge role in this. Gary Cohn will play a big role in it. I think our legislative affairs team will play a role in it. There's a lot of folks on the team -- Secretary Ross on the Commerce side. There's a lot of individuals -- he's assembled a world-class Cabinet that has a lot of interest in helping to grow the economy to attract jobs, create a more favorable tax climate here in the country, but also provide tax relief for middle-class Americans.

So we're not there yet.

Q So will it would be the Trump plan?

MR. SPICER: What?

Q Will it be the President's plan?

MR. SPICER: I mean, obviously we're driving the train on this. So, I mean, we're going to work with Congress on this. But I think the President, as you've heard multiple times the President be very clear -- this is a huge priority for him and something that he feels very passionately about. And so we'll have more on that later.

John.

Q Sean, the documents that Chairman Nunes saw here at the White House complex are described by his office as being executive branch documents. In the early days after the President sent out that tweet, the White House was digging around for anything to corroborate what the President had tweeted out. Why did it take the Intelligence Committee Chairman coming here to the White House to view executive branch documents to uncover this information? Why couldn't the White House?

MR. SPICER: Well, as I mentioned I think to Margaret, I'm not going to -- I will stick to what the Chairman has said publicly. And my understanding from his public comments are that there are certain systems that he doesn't have access to. That was his explanation, and I'm going to -- I think you should follow up with him on that.

Q Did the White House ever search the same documents that the Chairman searched?

MR. SPICER: I don't know what he found, so therefore it would be hard to say -- to make an assessment of what he was briefed on or what we know. So that's a really hard question to answer at this point.

Q Is it possible that these documents were merely surveillance reports that were --

MR. SPICER: I'm not going to get into hypotheticals, John. I don't know what he found. And to start to say what's possible, what's not, I don't know.

Q Well, let me just finish, if I could. Is it possible that these were surveillance reports from security clearances that were collected after people had filled out Standard Form 86?

MR. SPICER: I don't know. I don't know what he -- I honestly don't know what he's got on his systems and what the intel community has on theirs that he wouldn't have access to. So I don't know what he would have had access to already.

Eamon.

Q Thanks, Sean. On tax cuts, it looks like you guys got a little bit of political cover from the House Freedom Caucus over the weekend to do this without paying for all of it -- that is, adding to the deficit. What's the right number from the White House's perspective to add to the deficit in order to do tax cuts? How high are you willing to go in terms of deficit?

MR. SPICER: It's a really early question to be asking at this point. I think the question is, as we construct this both on the corporate side and then on the individual side, I think part of it is it's going to be an equation that isn't just driven by that, but more what's going to attract jobs, what's going to help us build, what's going to grow the economy. I think we're growing around -- potentially, growing around 2.6, and the President really would like to see that growth right up in the high 3s, 4s, and 5s. And so there's a question about what part of tax reform, especially on the corporate side, will help us spur the economy and grow jobs.

And I think that's an ongoing discussion. I think that's more of the driver of this. And then I think as it evolves we'll have the score and we'll know more.

Q Are you comfortable entirely adding to the deficit? Or do you think something needs to be offset, maybe some other spending cuts somewhere else?

MR. SPICER: You're asking really early in the process to make that kind of analysis before we have a policy set forth or have any kind of notion of what a score would look like.

Olivier.

MR. SPICER: Thanks, Sean. There's been an escalation of the American role in the war against the Islamic State. You've seen Marines come ashore in Syria. There have been changes to rules of engagement. I'm trying to understand the relationship between that change and the President's ISIS strategy review. Has he personally signed off on all the changes in America's posture in the field since January 20th? Is that something that's left up to the commanders in the field? I don't understand the relationship between --

MR. SPICER: Well, it depends on which mission you're talking about, specifically, or --

Q Marines left in, I think, October. They obviously went ashore much more recently than that. So did he have to sign off on that?

MR. SPICER: I think it depends on -- I mean, he speaks with General Mattis, his national security team very regularly. I'm not going to get into some of the details of what comes up in those settings. But I will say that, as I've noted in the past, I think philosophically the President has made it very clear that he wants to give the commanders on the ground much more flexibility to execute their mission, especially when it comes to defeating ISIS. That's a very big change in philosophy, but I think it also depends on the magnitude of the mission, the number of ground troops in particular. And so this is an ongoing discussion that he has with Secretary Mattis, Chairman Dunford and others.

Q So, on the review, are you waiting -- is the President waiting until the review is complete before you announce sort of a new posture and new strategy? Or is it as conclusions come in you're adapting day to day?

MR. SPICER: I think some of it is an ongoing discussion that he's having with both Chairman Dunford of the Joint Chiefs and Secretary Mattis of DOD. At certain times when they meet they'll update him on certain things and give him an update on where they're headed right now. As the review is ongoing, there's certain events that are part of -- will be part and parcel of the review in terms of where we're going, and so they'll update him on that and talk to him about the tweaks.

Gabi.

Q Thank you, Sean. President Trump has sent out two tweets now criticizing members of the House Freedom Caucus for preventing Planned Parenthood from being defunded by opposing the AHCA. Is that something that he would want to see tacked on as a rider to next month's spending bill?

MR. SPICER: Well, I think that he's made very clear what his position is on Planned Parenthood, and obviously this was an opportunity to defund it. But I don't want to get ahead of our legislative strategy. We'll look at other opportunities. But this is definitely one that was a way to make that happen.

Steve.

Q On that legislative strategy and the idea of working with Democrats, there's a school of thought in this town that last week proved that the President is lacking in political capital. So I have two questions. One is, what's in it for Democrats to work with the President now? And two, if fully pursued and to get things through the House, Democrats and Republicans work together, wouldn't that tend to undermine the job security of Speaker Ryan if the House Freedom Caucus is frozen out?

MR. SPICER: Well, so two things. Number one, I think the message that sends to the American -- as I mentioned to, I think it was Jonathan, at the beginning, it's a two-way street. We heard -- when you see whether it's Judge Gorsuch, which they're throwing down decades of Senate tradition by saying we're just going to filibuster this guy -- I don't think there's anyone in America that can honestly look at his qualifications and suggest that he's not qualified as a jurist on the Supreme Court. I mean, there's nothing that anyone has seen or laid a glove on him through these four days that suggests that he's not qualified to serve.

And I think that it's a -- and again, with Obamacare, repealing and replacing it, several of the leading Democrats came out from the get-go and said, we have no interest in doing that. So I think there's a point at which both parties can look back and figure out whether or not it's worth engaging. I think the President, as I mentioned, is eager to get to 218 on a lot of his initiatives, whether it's tax reform, infrastructure. There are a lot of things. And I think that he is going to be willing to listen to other voices on the other side to figure out if people want to work with him to get these big things done, to make Washington work, to enhance the lives of the American people, then he's going to work with them.

I think he had a great meeting with the CBC the other day, for example, where he talked about infrastructure. He talked about loans and small business lending, education. There are things that he is willing to engage individuals with -- or groups or caucuses -- to get to 218 and further advance his agenda.

So it's not about undermining anybody. It's about moving the agenda forward and getting things done.

Q It's Speaker Ryan who puts bills on the floor, not the President. So what's in it for Speaker Ryan?

MR. SPICER: Getting things done. I think there is still a sense of doing what's in the best interest of this country that exists. So I mean, let's just make sure that we understand -- I think that his goal -- he came here to get things done. And I think as was pointed out, there was a level of disappointment that he expressed on Friday. He wants to get things done. If people want to work together -- and I think what this event on Friday did was, frankly, draw more people into the process, to saying, okay, let's figure out if we can actually come together with some consensus ideas to get to 218, whether or not they come from one side of the aisle or the other, to pass this bill and make a better system.

He understands -- and frankly, I think a lot of Democrats do -- that there's an opportunity here. With healthcare being such a big issue, with Obamacare being such a looming disaster, that we have an opportunity to do some stuff. And if Democrats want to join in, then that's great and we'll do that.

Mike.

Q You've talked quite a bit up there about the wide latitude that Secretary Price has to dismantle Obamacare from this spot. Is that still the case? Will he continue to try to dismantle Obamacare while you're trying to work with moderate Democrats on healthcare reform? And also, the healthcare bill would have repealed almost all those Obamacare taxes. Do you want to see those repealed as part of the tax reform bill?

MR. SPICER: I think Secretary Price is up here today. There's a lot of meetings that are already taking place internally with the team. There's a lot of options that are on the table in terms of -- especially when it comes to what we call phase one and phase two, trying to get some of that stuff out the door. And as we look back on -- talking about lessons learned, I think one of them is to try to get some of the phase one and phase two meshed together and pushed out.

How we do that, whether we wait for the revival of legislation before we put it up -- remember, I think -- just so we're clear, and I mentioned earlier on this -- Obamacare had a ton of fits and starts during its process. It was left for dead multiple times, but they pressed forward. I don't think that that's necessarily a model to look for in terms of how they jammed it down, but I do think that we have to recognize that we were 17, 18 days into this process.

I think the President has made very clear it's not over, there are people coming to the table, but he's going to listen to all good ideas across the spectrum to figure out what it takes to get to 218. And we'll see where we go from there.

John.

Q The tax question, to follow up on the -- the healthcare bill would have repealed those Obamacare taxes?

MR. SPICER: And I think that's part and parcel of that discussion, is how we look at both the taxes and some of the phase one stuff. But we're not ready to announce anything now.

Jon Decker.

Q Yeah, as far as Jared Kushner's offer to meet with Chairman Burr and talk with the Senate Intelligence Committee, is there any particular reason why the White House would not be opposed to the idea of Jared Kushner testifying, under oath, before that committee?

MR. SPICER: Again, Jared volunteered to meet with the committee. They haven't even confirmed having a meeting yet, so to get ahead of what they've even asked for would be a little silly.

Q But does it set, in the White House's view, a dangerous precedent in having a senior aide to the President going up? Ordinarily, we see, sometimes, the White House invoking executive privilege. Why haven't you done this in this particular case?

MR. SPICER: Because I think Jared did a job during the transition in the campaign where he was a conduit to leaders, and that's until we had a State Department -- a functioning place for people to go. Remember, we had a delay in some of these things, and that was his role. And he wants to make sure that he's very clear about the role that he played, who he talked to, and that's it.

Jim.

Q Is Obamacare repeal dead?

MR. SPICER: I don't think it's dead in the sense --

Q Or it would have to be dead if you're going to have Democrats working with you to address the Affordable Care Act.

MR. SPICER: Why? No, no, no, I don't know that that's true because I think it's --

Q Why would they work with you if --

MR. SPICER: Because it's dying.

Q -- you're still trying to repeal it?

MR. SPICER: Because I think part of it is, is there's a recognition that it is failing. It's dying on its own. It will be dead soon.

Q A lot of Democrats say it's not dying.

MR. SPICER: Okay, well, then a lot of Democrats need to get more money, because --

Q There are repairs that need to be made, they say, but to kill the whole thing might not be the route they want to go.

MR. SPICER: I understand what they want, but I think there's a difference. I think that we recognize that premiums continue to go sky-high, deductibles are going sky-high, choices are going down. By Leader Pelosi's own metric, this is dying. She's the one who crafted the metric. She said that there was a three-pronged system to determining its success. It is an abysmal failure. If they want to come back to the table and recognize how we can do it in a more responsible way to achieve the goals that Obamacare set out to do -- but do so in a way that is going to do the opposite of what Obamacare actually did, which is to increase choice, drive down cost -- we're willing to have that discussion. But right now --

Q They say repeal has to be put to the side.

MR. SPICER: Right. But, Jim, one of the things that I mentioned -- I just want to be clear on this -- is we have to figure out how we get to 216, 218, depending on where the number is that given day. That doesn't mean we need the entire Democratic Caucus. That means we need some responsible Democrats who want to sit down and have a discussion about how to do that. And I think that there may be enough of them that are willing to do that, but I understand where the Democratic leadership is, and that's one thing.

I mean, they continue to stake out a very, very far-left position. That's not where all their members are. And I think that we can -- based on the calls that have come in over the last 50, 60 hours, I think that there might be some room to have a conversation with people who want to engage in a constructive conversation on how to move forward.

So let's see how that evolves. I don't know that we're ready to jump into this today, but I think as the calls come forward, the President's view is, if you all want to get together and start coming to a way that we can come to resolution, we're willing to listen. But right now, we've got an agenda to continue to pursue.

Q There might be a middle ground there you think?

MR. SPICER: I'm not going to jump ahead, but I will say that we believe that there is something that could still be done at some point, and I think the further along we go, where premiums continue to go up, more and more people will be drawn into this discussion because there is going to be a continued cry from people in terms of the impact that it's having on their pocketbook and on their ability to see people that -- a doctor of their choice or a plan that's just not seeing them anymore.

Q A real quick follow-up on Chairman Nunes. Do you reject that there is any kind of perception problem whatsoever in having the Chairman over here the day before he comes out publicly and says, by the way, there's this information that's helpful to the President?

MR. SPICER: Well, I think the Chairman has made very clear through his public comments what his goal was, and I think anyone who wants to -- I mean, you can't ask someone to do a review of the situation, and then sort of create inferences because they're reviewing a situation that there's something that's not right about that. He is reviewing a situation. He did exactly -- and I think he's been fairly open with the press as far as what he was doing, who he spoke to, and why. And I think, you know, from our standpoint, that's what we had asked to do, is a review.

April.

Q Sean, several topics. One --

MR. SPICER: Shocker. (Laughter.)

Q Don't be. You heard the question that I lobbed at the Attorney General about the hate crime that happened in New York -- the white supremacist who went to New York and targeted a black man. Hate crimes are on the rise. What do you say? What is this White House saying about this obvious apparent hate crime?

MR. SPICER: I'm not going to -- I mean, you yelled at the Attorney General a specific case, if I'm --

Q The White House in the past had talked about this. And you talked about issues of hate crimes --

MR. SPICER: I'm glad to talk about the issues. I just want to be very clear that I am not going to reference any specific case before the DOJ right now. I will say that the President has recognized that we need to bring the country together. He wants to unite this country. He wants to bring people together. He had a very long conversation with respect to race in itself, which I think is somewhat -- if I'm not correct in your question --

Q (Inaudible.)

MR. SPICER: Okay, I just want to be clear. Thank you. And I think that was one of the topics that he talked about with the CBC. Some of the issues, with respect to crime and education, and some of the solutions that they suggested that could be done during their meeting. And I think those are the kind of things that I think we can continue that conversation.

Q Sean, unfortunately there has been a rise in hate crimes when it comes to different groups, to include anti-Semitic crimes. You've commented from that podium -- this is clear -- this gentleman, in his jailhouse, gave a statement to a reporter talking about he wishes the man were younger and he was a thug that killed. So what do you say to this? This is clear -- it's racism at its ugliest.

MR. SPICER: Two issues. Number one, I think hate crimes, anti-Semitic crimes of any nature should be called out in the most reprehensible way. There is no room for that in our country, and I think the President noted that in the Joint Address, that there is one issue that, despite policy, should unite us -- and that is calling out hate, that is calling out divisiveness based on the color of one's skin, one's religion, one's gender.

The President has been very clear on that, and he's called it out before. With respect to certain particular situations, he made it very clear. At the opening of his Joint Address, that's what he led with -- is a call to denounce hate no matter where we come from politically. He's also talked about it the night that he took the stage on that Wednesday morning around 2:40 a.m., about how one of the things that he needed to do and wanted to do as President was unite all Americans.

But I think that there's one other piece to this, April, that I just want to be clear on. While we unequivocally -- no question about it -- need to call out hate, anti-Semitism where it exists, there is another thing that we have to do, and, in your case in particular, while I don't know all of the details, and I don't want to reference any specific case -- but I think we saw this the other day with some of the anti-Semitic behavior that was going out with respect to people of the Jewish faith, is that we saw these threats coming into Jewish community centers, and there was an immediate jump to criticize folks on the right and to denounce people on the right and ask them to condemn them. And it turns out that, in fact, it wasn't someone on the right. And it was -- and the President, from the get-go, had said, I bet you it's not someone -- and he was right. And yet --

Q I'm not calling this --

MR. SPICER: Hold on, I understand that. And that's --

Q -- saying he's a white supremacist.

MR. SPICER: I understand that. And I think, in those cases, there's no question -- black and white -- we need to call out all instances of this.

That being said, while we're on the topic, I do think that there has been a rush to judgement in a lot of other cases when it comes to -- in particular, some of the anti-Semitic discussion -- where people have jumped to the conclusion about denouncing people on the right and asking for this. And in that particular case, we saw that the President was right and that this rush to judgment by a lot of folks on the left was wrong, and none of them have been held to account on that. And that is something that equally needs to be called out.

When people are charging something of someone that is not true, there has been nothing to go back to those individuals -- nothing -- on the left who came and asked for everyone on the right to denounce something that they weren't guilty of. And I think that there needs to be an equal -- go back in time and call out those individuals for rushing to judgment and calling out those individuals.

Q And my second topic, and I'm done. Someone who was in the room -- you like talking about the CBC meeting that happened last week. Someone who was actually in the room, at that meeting, said that the issue of HBCUs came up -- and that's a very sensitive subject right now in the black community and here at the White House. The issue of HBCUs came up, and Omarosa said that she would be the one heading the HBCU Office at the White House, and the President did not make a response confirming or denying. Will this be the case? Is this the case?

MR. SPICER: We don't have any announcements to make. I assume that you're referring to the executive order, and we don't have anything to announce on that subject at this time.

Kristen.

Q Sean, thank you. Given that the Freedom Caucus blocked the bill to repeal and replace Obamacare, does the President still believe he can work with the Freedom Caucus on future pieces of legislation?

MR. SPICER: I think it's going to depend on what legislation --

Q So not necessarily?

MR. SPICER: Well, again, I'm not going to -- it's not a question of -- we're going to work with anybody who wants to work with us on achieving the goals the President set out. I don't think -- we're not putting anyone and saying, "We'll never work with you again." It is that balance --

Q Has he written them off?

MR. SPICER: No, I don't think he's written -- no, I think, as he mentioned, he learned a lot through this process about loyalty. And it's not just a bloc, it's certain individuals. And again, I'm not going to get into naming names, but I think the President learned a lot through this process.

And one of the things that's interesting is, when you look back -- and I know there's been a lot to make of this -- the President also recognizes when there's not a deal to be made, when to walk away. That's one of the traits -- it's not just about making deals, it's knowing when to walk away from deals, and knowing when there's a bad deal that's the only solution.

And I think the President understood that while you can get a deal at the time, that sometimes a bad deal is worse than getting a deal. And I think he smartly recognized that what was on the table was not going to be keeping with the vision that he had, and so he decided that this was not the time and that a deal was not at hand.

Q Let me ask you about this tweet over the weekend. Does he regret tweeting to his followers that they should tune in to Judge Jeanine only to tune in, and then have her call for House Speaker Paul Ryan to step down?

MR. SPICER: He's a fan of the show. That's it, plain and simple. I mean --

Q But does he owe Speaker Ryan an apology then?

MR. SPICER: He and Speaker Ryan talked extensively over the weekend.

Q Did they talk today?

MR. SPICER: I don't know if they talked today. I think they talked both Saturday and Sunday at length. But again, he is a fan of the show. He tweeted out support of it. That's it, plain and simple.

Q A lot of people say it's a lot more than coincidence.

MR. SPICER: I know what a lot of people say, Kristen. I just said it.

Q So does he owe the House Speaker an apology?

MR. SPICER: No. He doesn't -- he has spoken -- for what? For supporting a show on Fox? No.

Dave.

Q And does he still have confidence they can work together, Sean?

MR. SPICER: Dave.

Q Two questions. One on the President choosing Jared Kushner for this new Office of American Innovation to reform government across the government. Obviously, Jared Kushner has 60-some days of experience in Washington -- never had a prior government job. Does the President view that, somehow, as an advantage in this case?

MR. SPICER: In some cases, when you look at the individuals that he's bringing in. Again, I think one of the things that Jared -- and again, they may talk more about this later -- but one of the things that Jared is looking at is some of the procurement -- the technology aspects. And if you've ever really dealt with the government and recognized how outdated and un-modernized some of this is, it is not serving the American people, it is not serving the constituents that many departments have. And I think looking at how we procure different things and procure technology in particular is important.

It's an important way -- I mean, I think when you look at the VA, in particular, and recognize how it handles certain things -- there are certain things it does really well, by the way. It buys prescription drugs really well. It buys them in bulk -- gets the job done. But there's certain things that it may not do as well in terms of how it keeps its records and how it serves veterans, how it lends money, et cetera -- that we can look at and figure out is there a better way.

Government is not business, right? We recognize that there are certain things that business would never do in terms of what government has to do, because we serve all of our people. But there are certain practices that we can put in place that can help us deliver a better product, a better service to the American people in some of these key areas. And I think that when you look at some of the business acumen that Jared and some of the other individuals who he is bringing into this process can really -- I think it is a great service to this country. \

There are so many individuals that Jared has talked that have done so well and been so blessed by our nation that have wanted to give back in some way, shape, or form, and are using this opportunity to help our country and serve our country in ways that they believe they can use their expertise to do.

Q On healthcare, this review that you've talked about -- what went right, what went wrong -- I know you don't want to name names, but would it be fair to say, at this point, that the President has written off some people?

MR. SPICER: I just -- I think I answered that question. It's not a question of written them off, it's a question of understanding -- there's sort of an understanding of how you deal with certain people and how they dealt with you. But it's not a question of writing them off. We're going to need to get to -- as time goes on, we'll get to -- I'm just going to keep saying 218, it's easier. I won't screw that one up down the line.

But I think that we recognize that as we go down this path of a big, bold agenda that the President has, that we're going to need every vote we can, and hopefully grow the vote in some cases to well beyond that. But we're not writing off anybody, but we do recognize there are some lessons learned form this process, and the President made it very clear on Friday.

Thank you, guys, very much. I'll see you tomorrow. Enjoy the day.

END

2:38 P.M. EDT

EXHIBIT E

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

U.S. Immigration
and Customs
Enforcement

FEB 2 5 2014

The Honorable Mike Thompson
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Thompson:

Thank you for your recent letter to the Department of Homeland Security (DHS) regarding immigration detainers.

As you know, Form I-247, Immigration Detainer–Notice of Action, is a notice that U.S. Immigration and Customs Enforcement (ICE), within DHS, has reason to believe that an alien may be subject to removal from the United States. By issuing a detainer, ICE requests that an LEA maintain custody of an alien for a period not to exceed 48 hours (excluding Saturdays, Sundays, and federal holidays) after he or she would otherwise be released by an LEA, to provide time for ICE to assume custody. While immigration detainers are an important part of ICE's effort to remove criminal aliens who are in federal, state, or local custody, they are not mandatory as a matter of law. As such, ICE relies on the cooperation of its law enforcement partners in this effort to promote public safety.

ICE uses detainers to help focus its limited resources on its public safety, national security, and border security missions. ICE's use of detainers is focused on the most serious criminal offenders. ICE limits the use of detainers against individuals arrested for minor misdemeanor offenses (e.g., traffic offenses and other petty crimes) who are not otherwise ICE priorities, helping to ensure that limited available resources are focused on apprehending felons, repeat offenders, and immigration violators who fall under other ICE priorities.

To ensure clarity with law enforcement partners and the public, information about immigration detainers is publically available online at http://www.ice.gov/news/library/factsheets/detainer-faqs/htm. The site also provides a link to Form I-247. Additionally, a short video briefing for front-line state and local law enforcement personnel describing ICE's use of immigration detainers and extensive supporting materials for law enforcement leadership are available at http://www.ice.gov/secure_communities/crcl.htm.

Thank you once again for your letter. The co-signers of your letter will each receive a separate, identical response. Should you need additional assistance, please do not hesitate to contact me at (202) 732-5907.

Sincerely,

Daniel H. Ragsdale
Acting Director

EXHIBIT F

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-12276

COMMONWEALTH OF MASSACHUSETTS,
Respondent-Appellee,

v.

SREYNUON LUNN,
Petitioner-Appellant.

BRIEF OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

Chad A. Readler
Acting Asst. Attorney Gen.

William C. Peachey
Director
Office of Immigration Litigation, District Court Section

Erez Reuveni
Senior Litigation Counsel

Joshua S. Press
Joseph A. Darrow
Trial Attorneys
U.S. Dept. of Justice
Civil Division
P.O. Box 868
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 305-0106

Dated: March 27, 2017

Counsel for Amicus Curiae

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The United States submits this brief pursuant to: (a) the Court's solicitation of amicus briefs in Commonwealth v. Lunn, SJC-12276 (Feb. 8, 2017), and (b) 28 U.S.C. § 517.

INTEREST OF AMICUS CURIAE

The issues raised by this case deal directly with the Federal Government's broad power over immigration and the status of aliens. Although the Federal power to determine immigration policy is well settled, it is equally settled that in our system of dual sovereignty the Federal Government depends upon the cooperation of State and local law enforcement agencies to help identify, apprehend, and detain removable aliens in order to effectuate their removal and ensure that they do not abscond from Federal law enforcement. Immigration detainers are a vital part of this process because they request local law enforcement agencies (1) to inform Federal immigration authorities prior to the release of a removable alien from custody and (2) to hold the alien for no more than 48 hours so that Federal immigration authorities may assume custody. See 8 C.F.R. § 287.7(a), (d).

It is not uncommon under our system of governance for State and local law enforcement agencies to locate and detain removable aliens in response to Federal requests for assistance. This cooperation is necessary to preserve the

Federal Government's ability to enforce the immigration laws and ensure that criminal aliens and those likely to abscond are promptly removed from the United States. Indeed, Congress specifically requires that certain criminal aliens be detained pending their removal from the United States. See 8 U.S.C. §§ 1226(c), 1231. Without such cooperation, criminal aliens would be released back into the communities, endangering public safety and requiring even more dangerous at-large re-apprehensions of aliens prone to criminality or flight.

This Federal-State cooperation is lawful under the laws and Constitution of the United States. This is because State officers may temporarily detain an alien--like the Petitioner-Appellant in this case--subject to a final order of removal based on the Federal Government's direction and authorization. In this case, such authorization came through a notice within the detainer that there is probable cause to believe the Petitioner-Appellant is subject to an order of removal and, as a result, is subject to arrest and mandatory detention during a (presumptively) 90-day "removal period." 8 U.S.C. § 1231(a)(1). Moreover, detaining such aliens for no more than 48 hours so that immigration authorities can assume custody to effectuate their removal does not violate the United States Constitution.

Finally, amicus would like to inform the Court of new developments governing the issuance of immigration detainers. Even though they are not dispositive for this specific case, amicus believes these changes indicate that a facial ruling on the constitutionality of Federal immigration detainers would be imprudent at this time.

STATEMENT OF THE ISSUES

Amicus will address issues related to this Court's solicitation for amicus briefs. Specifically, (1) whether a State may temporarily hold an alien subject to a final order of removal[1] upon release from State custody in response to a Federal immigration detainer indicating that the alien is removable and requesting the State temporarily hold the alien for Federal immigration authorities; (2) whether the brief detention of an alien subject to a Federal immigration detainer indicating that he is subject to a final order of removal violates any Federal constitutional rights;[2] and (3)

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[1] While there are other bases for immigration detainers (as set forth on the detainer form) that provide probable cause, the United States believes (discussed below) that this Court should limit its decision to the circumstances at issue in this case--an alien subject to a final order of removal.

[2] Amicus acknowledges that art. 14 of the Declaration of

whether this case, which is moot as to Petitioner-Appellant, is appropriate for addressing immigration detainers' constitutionality for individuals not similarly situated.

STATEMENT OF THE CASE

I. STATUTORY AND REGULATORY BACKGROUND

An "immigration detainer" is a document by which the U.S. Department of Homeland Security ("DHS") provides notice of its intent to assume custody of a removable alien detained in the custody of another law enforcement agency.[3] See 8 C.F.R. § 287.7(a); see also U.S.C. § 1101(a)(3) (an "alien" is any person who is neither a citizen nor a national of the

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Rights "provides more substantive protection to *criminal* defendants than does the Fourth Amendment," Commonwealth v. Upton, 394 Mass. 363, 373 (1985) (emphasis added), and that this Court "ha[s] a duty to come to its own conclusion about the meaning of [the Commonwealth's] Constitution," Commonwealth v. Gonsalves, 429 Mass. 658, 681 (1999) (Fried, J., dissenting). As the United States' relevant expertise lies with the Fourth Amendment and Federal immigration law, this brief is limited to a discussion of those topics. Cf. R.R. Comm'n of Tex. v. Pullman Co., 312 U.S. 496, 500 (1941) (emphasizing the importance of avoiding "needless friction with state policies").

[3] On March 24, 2017, DHS's component agency, U.S. Immigration and Customs Enforcement ("ICE"), released new procedures regarding ICE's issuance of immigration detainers. See U.S. Immigration and Customs Enforcement, Policy 10074.2, Issuance of Immigration Detainers by ICE Immigration Officers (Mar. 24, 2017), available at https://www.ice.gov/detainer-policy. These were accompanied by a revised immigration detainer form. See id. As described in more detail below, these changes make this case a poor vehicle for addressing the constitutionality of immigration detainers writ large.

United States). According to federal regulations, the detainer "serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien." 8 C.F.R. § 287.7(a). As that regulation explains, an immigration detainer is a request--not a directive--for other Federal, State, local, or tribal law enforcement agencies to inform DHS of a pending release date for the alien in question, and to hold the alien for up to 48 hours to allow ICE to assume custody.[4]

DHS's standard detainer form (known as a "Form I-247") sets forth the basis for the agency's determination that it possesses probable cause to believe that the subject is a

[4] See Galarza v. Szalczyk, 745 F.3d 634, 643 (3d Cir. 2013) (finding that an immigration detainer is in the nature of a "request," rather than a mandate, and Tenth Amendment concerns are therefore not implicated); United States v. Uribe-Rios, 558 F.3d 347, 350 n.1 (4th Cir. 2009) (same)(citing 8 C.F.R. § 287.7(d)); United States v. Female Juvenile, A.F.S., 377 F.3d 27, 35 (1st Cir. 2004) (same); see also Carchman v. Nash, 473 U.S. 716, 719 (1985)(defining a criminal detainer as "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent"); Commonwealth v. Carr, 464 Mass. 855, 862 (2013) (describing Boston police officers' use of a criminal detainer); Black's Law Dictionary 543 (10th ed. 2014) (defining detainers as "request[s] ... to a prison, jail, or asylum requesting either that a certain inmate be held for the agency or that the agency be notified a reasonable time before the inmate is released").

removable alien. For example, and most relevant to this case, the Form I-247D, which was in effect at the time DHS lodged it with Commonwealth authorities as to Mr. Lunn, indicated that a final order of removal had already been entered against him. See R.A. 35. Other federal agencies also use detainers as a way to hold individuals arrested by state or local law enforcement until they can be taken into custody. Such circumstances range from being absent without leave from the armed forces, see, e.g., Andrews v. State, 962 So. 2d 971, 973 (Fla. Dist. Ct. App. 2007)(recounting how a DD Form 553 was issued for the desertion of a military officer and Federal agents enlisted local police in the search of his residence and arrest), to parole and probation violations, see, e.g., United States v. Chaklader, 987 F.2d 75, 77 (1st Cir. 1993) (per curiam); Furrow v. U.S. Bd. of Parole, 418 F. Supp. 1309, 1312 (D. Me. 1976) (prisoner was granted parole by State board but not delivered into Federal custody pursuant to Federal detainer until four days later), to major felony offenses, see, e.g., United States v. Winter, 730 F.2d 825, 826 (1st Cir. 1984) (prisoner held by State pursuant to Federal detainer from December 14, 1981, when State granted prisoner parole, until January 21, 1982, when he was released to Federal custody).

ICE and the legacy Immigration and Naturalization Service ("INS")[5] have long issued detainers pursuant to the country's sovereign power to police its borders and exclude or deport aliens. See, e.g., Fiallo v. Bell, 430 U.S. 787, 792 (1977); Kleindienst v. Mandel, 408 U.S. 753, 765-66 & n.6 (1972)(collecting cases and noting how "the Court's general reaffirmations of this principle have been legion"); Castro v. DHS, 835 F.3d 422, 439 (3d Cir. 2016). Congress codified and consolidated this power in the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101 et seq., which: (1) provides the Secretary of Homeland Security with the authority to enforce the immigration laws and "the power and duty to control and guard the borders and boundaries of the United States against the illegal entry of aliens," id. at § 1103(a)(1), (5); (2) establishes certain categories of aliens who are barred from admission to the United States, id. at § 1182, or may be removed from the United States after their admission, id. at § 1227; (3) grants immigration

[5] The INS was part of the Department of Justice. In 2002, however, Congress abolished the INS and transferred jurisdiction to implement the INA to the Secretary of Homeland Security. See 6 U.S.C. §§ 202, 291, 557; La. Forestry Ass'n, Inc. v. Sec'y U.S. Dep't of Labor, 745 F.3d 653, 659 (3d Cir. 2014). Accordingly, INA directives to the "Attorney General" now generally pertain to the Secretary of Homeland Security, with limited exceptions not relevant to issuance of an immigration detainer. See id.

officials broad discretion as to their enforcement priorities, id. at § 1252; (4) instructs the Secretary of Homeland Security to "establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority" under the INA, id. at § 1103(a)(3); and (5), provides specific authority to arrest and detain certain aliens, id. at §§ 1226, 1231, 1357.

In light of this statutory backdrop, the Federal Government has regularly used detainers as a means of obtaining custody of aliens for purposes of removal (previously referred to as "deportation") since at least the 1940s. See, e.g., In re Korner, 50 Cal. App. 2d 407, 408–09 (1942) (mentioning that INS had issued a detainer to state authorities). For example, in a 1950 decision, a federal district court addressed a challenge to the legality of a deportation order for an alien who was the subject of an immigration detainer requesting his delivery "to the custody of the immigration authorities at the time sentence is fulfilled in the state institute." Slavik v. Miller, 89 F. Supp. 575, 576 (W.D. Pa. 1950), aff'd, 184 F.2d 575 (3d Cir. 1950) (per curiam); see also Chung Young Chew v. Boyd, 309 F.2d 857 (9th Cir. 1962) (INS issued detainer to federal prison authorities); In re Lehder, 15 I. & N. Dec. 159 (BIA 1975) (INS detainer requested that federal prison notify INS at least 30 days prior to his release). Federal Register notices throughout this time period also referenced "immigration detainers." See Dep't of Justice, Prescribing Regulations of the United States Board of Parole and Youth Correction Division of the Board, 27 Fed. Reg. 8487 (Aug. 24, 1962) (referring to "immigration detainers"); Dep't of Justice, Bureau of Prisons, Control Custody, Care, Treatment, and Instruction of Inmates, 47 Fed. Reg. 47168 (Oct. 22, 1982) (referring to "deportation detainers"); Dep't of Justice Office of Justice Assistance, Research & Stats., State Reimbursement Program for Incarcerated Mariel-Cubans, 49 Fed. Reg. 38719 (Oct. 1, 1984) (referring to Form I-247, "Immigration Detainer Notice").

These cases and regulations illustrate the regular use of immigration detainers prior to 1986 to request that a law enforcement agency transfer an alien to INS custody at the completion of the alien's criminal sentence and notify INS prior to the alien's release. ICE today relies upon similar partnerships with state law-enforcement agencies to identify certain removable aliens.

In 1986, Congress enacted the Anti-Drug Abuse Act, which, among other things, amended the INA to codify the longstanding use of immigration detainers by federal immigration officers, in part, for aliens arrested for "violation[s] of any law relating to controlled substances." 8 U.S.C. § 1357(d). Rather than define immigration detainers or limit their contemporaneous usage, Congress instead mandated that immigration officers must promptly determine whether to issue a detainer for an individual who has been arrested for a controlled substance violation by a Federal, State, local, or tribal law enforcement agency if there was "reason to believe" that the individual arrested "may not have been lawfully admitted ... or is not lawfully present in the United States." Id. at § 1357(d)(1)-(3).

Although this statutory mandate spoke specifically to arrests for controlled substance violations, it also presupposes the existence of the Federal Government's general detainer authority, which is broader. In fact, this provision was added at the insistence of law enforcement officials who were agitated that the INS was not always filing detainers to take custody of aliens charged with drug-related offenses. See, e.g., 132 Cong. Rec. H6716-03 (daily ed. Sept. 11, 1986) (statement of Rep. Ackerman as read by Rep. Smith), at 1986

WL 790075 (stating how the Act's purpose, among other things, was to address "local law enforcement complaints concerning the INS' inability to issue a judgment on a suspect's citizenship status fast enough to allow the authorities to continue to detain him"); see also Comm. for Immigrant Rights of Sonoma Cnty. v. Cnty. of Sonoma, 644 F. Supp. 2d 1177, 1199 (N.D. Cal. 2009) ("[N]othing in the statute ... purports to limit the issuance of immigration detainers to cases where an alien is arrested ... for a violation of any law relating to controlled substances.").

The INS subsequently issued regulations governing the issuance of immigration detainers.[6] Those regulations codified the agency's existing authority to request other law enforcement agencies to temporarily maintain custody of the alien in order to permit assumption of custody by the INS. See 53 Fed. Reg. 9281, 9283-84 (Mar. 22, 1988).

The current regulations, promulgated after Congress rewrote much of the INA through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"),

[6] INS and DHS have amended those regulations on a number of occasions. See, e.g., Dep't of Justice, INS, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, Interim Rule, 62 Fed. Reg. 10312, 10392 (Mar. 6, 1997); 8 C.F.R. §§ 242.2, 287.7 (1988).

Pub. L. No. 104–208, 110 Stat. 3009-546 (Sept. 30, 1996),[7] provide that "[a]ny authorized immigration officer may at any time issue a Form I-247 ... to any other Federal, State, or local law enforcement agency," 8 C.F.R. § 287.7(a), and identify the personnel who may issue immigration detainers (such as deportation officers or immigration inspectors), 8 C.F.R. § 287.7(b)(1)-(8). These personnel are, under certain conditions, authorized to make warrantless arrests for violations of federal immigration law.[8]

The regulations also request that other agencies provide DHS with "all documentary records and information" related to the alien's status; limit the period for which aliens may be held at ICE's request so that they may assume custody to 48

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[7] Among other things, Congress clarified through IIRIRA that nothing in the INA should be construed as preventing state or local officers "to cooperate ... in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." IIRIRA, Pub. L. No. 104–208, § 133, 110 Stat. 3009-564, codified in 8 U.S.C. § 1357(g)(10)(B).

[8] See 8 U.S.C. § 1357(a)(2) ("Any officer or employee ... authorized under regulations prescribed by the [Secretary of Homeland Security] shall have power *without warrant ...* to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any ... law or regulation [governing the admission, exclusion, expulsion, or removal of aliens] and is likely to escape before a warrant can be obtained for his arrest[.]" (emphasis added)); see also 8 C.F.R. § 287.5(c) (listing immigration officers with authority to make warrantless arrests); 8 C.F.R. § 287.7(b) (listing immigration officers with authority to issue detainers).

hours (excluding weekends and federal holidays);[9] and specifies that DHS is not financially responsible for an alien's detention unless it issues a detainer for, or assumes custody of, the alien. See 8 C.F.R. § 287.7(c)-(e). The immigration detainer thus enables ICE to notify other Federal, State, or local agencies that it has determined that there is probable cause to believe the subject is a removable alien based upon: (1) a final order of removal against the alien; (2) the pendency of ongoing removal proceedings against the alien; (3) biometric confirmation of the alien's identity and a records match in federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks lawful immigration status or, notwithstanding such status, is removable under Federal immigration law; or (4) where the alien's voluntary statements to an immigration officer, or other reliable evidence, indicate that the alien either lacks lawful immigration status or, notwithstanding such status, is removable. See generally R.A. 16–20.[10]

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[9] The Form I-247D used in Mr. Lunn's case (as well as the Form I-247A) only requested his detention up to 48 hours, including weekends and Federal holidays.

[10] Prior versions of the Form I-247 indicated that ICE had initiated an investigation to determine whether the alien was subject to removal, rather than had probable cause to believe

Most relevant here, where "an alien [ha]s [been] ordered removed, the [Secretary of Homeland Security] shall remove the alien from the United States within a period of 90 days," referred to as the "removal period." 8 U.S.C. § 1231(a)(1)(A). Thus, in order to ensure prompt removal, Congress made clear that an alien subject to a final order of removal *shall* be detained pending effectuation of that order. See 8 U.S.C. § 1231(a)(2)("During the removal period, the [Secretary of Homeland Security] shall detain the alien."). Congress did not wish to interfere with Federal or State criminal processes, however, see, e.g., Duamutef v. INS, 386 F.3d 172, 179 (2d Cir. 2004), and thus "the [Secretary of Homeland Security] may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment," 8 U.S.C. § 1231(a)(4)(A). Accordingly, Congress required the agency to take custody of such aliens *after* their release from confinement, at which time, as relevant here, the "removal period" begins to run. Id. at § 1231(a)(1)(B)(iii) ("removal period begins ... [on] the

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the alien was already subject to removal. See, e.g., Miranda–Olivares v. Clackamas Cnty., No. 3:12–cv–02317–ST, 2014 WL 1414305, at *9–11 (D. Or. Apr. 11, 2014). However, those versions of the Form I-247 that are still operative (that is, the Form I-247A, Form I-247D, Form I-247N, and Form I-247X) no longer use this language.

date the alien is released from detention or confinement”); see also 8 U.S.C. § 1226(c)(1) (providing that the Secretary of Homeland Security is to take certain deportable aliens into custody “when the alien is released”).

Finally, on March 24, 2017, per Secretary Kelly’s direction, ICE directed the retirement of Form I-247D, Form I-247N, and Form I-247X to be replaced with a consolidated detainer form, Form I-247A, effective on April 2, 2017 (attached as Exhibit A). This consolidated detainer form, as did the prior Form I-247D, requests that recipient law enforcement agencies (1) notify DHS as early as practicable before a removable alien is released from criminal custody and (2) maintain custody of the alien for a period not to exceed 48 hours beyond the time he would otherwise have been released to allow DHS to assume custody (without any exception for Saturdays, Sundays, and holidays). In addition, Form I-247A, as did the prior Form I-247D, sets forth the basis of the issuing immigration officer’s probable cause to believe that the subject is a removable alien and advises that a copy of the form must be served on the alien in order for the detainer to take effect,. Furthermore, ICE Policy No. 10074.2, also released March 24, 2017, directs that all immigration detainers issued to removable aliens must now be accompanied by either a Form I-200 (Warrant for Arrest of Alien), signed by an authorized immigration officer, or a Form I-205 (Warrant of Removal), signed by an authorized immigration officer. See U.S. Immigration and Customs Enforcement, "Detainer Policy" and accompanying hyperlinks (Mar. 24, 2017), available at https://www.ice.gov/detainer-policy.

II. PROCEDURAL BACKGROUND

Petitioner-Appellant Sreynoun Lunn was issued a final order of removal on June 25, 2008.[11] In re Lunn (Imm. Ct. June 25, 2008) (attached as Exhibit B). On October 16, 2008 he was released from ICE custody on an order of supervision pending his removal because his country of origin declined to provide travel documents. See 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4. Nearly ten years later, Mr. Lunn was arrested on charges of robbery in violation of Massachusetts law. See R.A. 37-38; see also R.A. 10. The same day of the arrest, ICE lodged an immigration detainer with relevant State authorities. R.A. 35. That detainer indicated that "probable

[11] This Court "may take judicial notice of the court papers filed in related cases." US Bank Nat'l Ass'n v. Schumacher, 467 Mass. 421, 425 n.8 (2004); see also Commonwealth v. Marinho, 464 Mass. 115, 140-41 n.12 (2013) (Duffly, J., concurring in part and dissenting in part) (noting how "court[s] may take judicial notice of Federal immigration statutes and ... decisional law").

cause exists that [Mr. Lunn] is a removable alien" based on: (1) "a final order of removal against the subject" and (2) "biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicated, 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." Id.

This version of the Form I-247D at issue requested that local law enforcement: (1) serve a copy of the detainer form on Mr. Lunn, (2) "as early as possible prior to the time you otherwise would release [Mr. Lunn]" to notify ICE, and (3) "maintain custody of [Mr. Lunn] for a period NOT TO EXCEED 48 HOURS beyond the time [he] would otherwise have been released from your custody to allow [ICE] to assume custody." Id. The form further clarified that the request would be operative only if local law enforcement "serve[d] a copy of this form on [Mr. Lunn]." The record appears to reflect that such service occurred. R.A. 38. Thereafter, Mr. Lunn declined to post bail and remained in county custody pending trial. Id.

On October 24, 2016, Mr. Lunn was arraigned in the Central Division of the Boston Municipal Court on charges of unarmed robbery. See R.A. 10-11. The criminal charges against Mr. Lunn were dropped on February 6, 2017 for lack of prosecution. R.A. 12. Mr. Lunn filed a state habeas petition requesting that the trial court order his release and not honor the immigration detainer lodged against him October 23, 2016. Ibid. The trial court declined to do so, ordering that he be held in custody pursuant to the immigration detainer.[12] Ibid. "[S]everal hours" after Mr. Lunn was to be released from state custody following dismissal of the charges against him, ICE took him into custody. R.A. 14.

On February 7, 2017, Mr. Lunn filed an emergency petition for relief with this Court, asking to be released. R.A. 50. Justice Lenk issued an order reserving and reporting the matter to the full Court, observing that while the matter was moot as to Mr. Lunn given his release from state custody, "the case raises important, recurring, time-sensitive issues that will likely evade the full [C]ourt's review in future cases" and anticipated that the full Court would address the

[12] While here, the trial court, rather than State or local law enforcement officials, relied upon the immigration detainer, it would be contrary to federal immigration law to construe 8 C.F.R. § 287.7 as *requiring* submission by DHS of a detainer to a State trial court. A contrary conclusion would present serious federal preemption issues. See Arizona v. United States, 132 S. Ct. 2492, 2506 (2012).

legality of Mr. Lunn's brief detention prior to his transfer to immigration custody "despite its mootness." R.A. 71.

Petitioner-Appellant's brief contends (1) that Massachusetts law does not authorize the Commonwealth to hold him in custody after the expiration of his criminal custody and that Federal law cannot authorize such a detention either; (2) that, notwithstanding that his Form I-247D indicated probable cause existed regarding how he had already been ordered removed, his detention violated the Fourth Amendment because detainers are not issued by neutral or detached magistrates, and (3) that the form is insufficiently detailed to support any such finding of probable cause. Br. of Pet.-App. at 14-44. On February 8, 2017, the full court requested amicus briefs. R.A. 72.

SUMMARY OF THE ARGUMENT

In our system of dual sovereignty, the United States' ability to enforce immigration law depends upon the cooperation of State sovereigns and their municipal law enforcement agencies. Since at least the 1940s, the linchpin of this cooperation has been the Federal immigration detainer, a request that local law enforcement inform immigration authorities prior to releasing removable aliens from custody and to hold them for no more than 48 hours so that Federal immigration authorities may assume custody.

It is settled law that the United States Constitution does not preclude State officers from cooperating with Federal authorities by taking a suspect into temporary custody for violating Federal law--including immigration law. So long as State officers exercise their inherent arrest authority in response to *requests* for assistance from the Federal Government, such cooperation is permitted. Furthermore, State officers may rely on immigration officers' determinations of probable cause that an alien is removable.

The fact that an immigration detainer does not comply with the more rigorous Fourth Amendment requirements applicable in the criminal context does nothing to alter this outcome. As the Supreme Court explained nearly sixty years ago, there is "overwhelming historical legislative recognition of the propriety of administrative arrest[s] for deportable aliens[.]" Abel v. United States, 362 U.S. 217, 233 (1960). The requirement of a finding of probable cause by a neutral magistrate has thus *never* applied to immigration detention, regardless of whether that detention is prompted by an immigration detainer or some other basis.

A conclusion to the contrary-–ignoring the extensive history of the limited nature of the Fourth Amendment in the immigration context--would completely undermine any effective immigration enforcement system, which must process the hundreds of thousands of aliens arrested for immigration violations each year. Such similar considerations undergird other forms of legal process that authorize temporary detentions, including detainers or holds issued by non-judicial entities, in numerous contexts, and are a necessary component of any effective civil immigration enforcement scheme.

Finally, although the parties ask the Court to issue a sweeping ruling addressing the legality of the use of detainers in *any* context, the sole issue before the Court is a detainer issued to a criminal alien subject to a final order of removal. As the detainer policy and underlying statutes at issue have applications in many circumstances not at issue in this appeal, the Court should decline the parties' invitation and, to the extent it views the case as justiciable, limit its ruling to aliens similarly situated to Mr. Lunn.

ARGUMENT

I. STATES MAY TEMPORARILY HOLD ALIENS SUBJECT TO A FINAL ORDER OF REMOVAL IN RESPONSE TO AN IMMIGRATION DETAINER

No party or amicus disputes that immigration detainers are voluntary requests, rather than mandatory commands. As explained below, Petitioner-Appellant points to no affirmative Massachusetts law restricting the Commonwealth's law enforcement agencies' authority to cooperate with such requests and to detain removable criminal aliens under their own inherent authority to enforce Federal law at the request or direction of the Federal Government. Just as State police officers are allowed to cooperate with another State's request to detain a criminal temporarily to enable the other State to take custody in an orderly manner, State officials may cooperate with the Federal Government's requests to briefly detain aliens (such as Mr. Lunn) who have already been ordered removed from this country, and thereby to enable the Federal Government to take custody in an orderly and peaceful manner.

A. Detainers Are Voluntary.

Although the parties and other amici devote much of their briefing to the question of whether detainers are mandatory or voluntary, the Court need not dwell on that issue. The United States agrees that immigration detainers are not mandatory. Rather, as the governing regulation and case law indicate, they are "requests" upon State law enforcement to voluntarily assist Federal immigration authorities. The regulation provides that a detainer "serves to *advise* another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien." 8 C.F.R. § 287.7(a) (emphasis added).[13] In light of this language, courts have construed immigration detainers to be no more than a request. See, e.g., Galarza, 745 F.3d at 644 ("[R]eading § 287.7 to mean that a federal detainer filed with a state or local [agency] is a command to detain an individual on behalf of the federal government, would violate the anti-commandeering doctrine of the Tenth Amendment."); see supra n.4; cf. Moody v. Daggett, 429 U.S. 78, 80 n.2 (1976) (noting in the context of criminal detainers that where, as here, "two autonomous jurisdictions are involved, ... a detainer is a matter of comity").

[13] While it is true that 8 C.F.R. § 287.7(d) includes "shall" language that could be read as binding, this actually defines the maximum length of time that an alien with an immigration detainer may be held. It does not require local law enforcement agencies to hold anyone.

B. States Have Inherent Authority To Assist In The Enforcement Of Federal Law.

The Supreme Court has long recognized that the United States Constitution does not preclude State officers from cooperating with Federal authorities by taking a suspect into custody for violating Federal law. See United States v. Di Re, 332 U.S. 581, 589 (1948)("authority of State officers to make arrests for federal crimes is, absent federal statutory instruction, a matter of State law"); Miller v. United States, 357 U.S. 301, 305-06 (1958) (lawful for "state peace officers" to make "an arrest for violation of federal law"). The Judiciary Act of 1789 even recognized the authority of a state court to "arrest[] and imprison[]" a person suspected of a Federal offense, to be held for later trial by an appropriate Federal court. See Act Sept. 24, 1789, ch. 20, § 33, 1 Stat. 91; Di Re, 332 U.S. at 589 n.8 (quoting Judiciary Act provision); Nevada v. Hicks, 533 U.S. 353, 366-67 (2001) ("'Under [our] system of dual sovereignty, we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States' [.]" (quoting Tafflin v. Levitt, 493 U.S. 455, 458 (1990))).

Contemporaneous writings suggest, for example, that the Framers envisioned the Federal Government making use of state officials generally and, in particular, to enforce tax laws. See Printz v. United States, 521 U.S. 898, 910 (1997) (discussing The Federalist Nos. 27, 36, 45 and noting "The Federalist's more general observations that the Constitution would 'enable the [national] government to employ the ordinary magistracy of each [State] in the execution of its laws'"). The Court explained that such statements "appear to rest on the natural assumption that the States would consent to allowing their officials to assist the Federal Government ... an assumption proved correct by the extensive mutual assistance the States and Federal Government voluntarily provided one another in the early days of the Republic[.]" Id. at 910 (citing FERC v. Mississippi, 456 U.S. 742, 796, n.35 (1982) (O'Connor, J., concurring in judgment in part and dissenting in part)).

The United States Constitution has therefore always been understood to permit States to assist in Federal Government's enforcement of Federal law, including with the arrest or detention of Federal immigration violators in cooperation with the Federal Government. See, e.g., United States v. Santana-Garcia, 264 F.3d 1188 (10th Cir. 2001);

Gonzales v. Peoria, 722 F.2d 468, 474 (9th Cir. 1983) (holding that Federal law does not preclude local enforcement of the criminal provisions of the INA), overruled on other grounds by Hodgers-Durgin v. De La Vina, 199 F.3d 1037 (9th Cir. 1999); United States v. Janik, 723 F.2d 537, 548 (7th Cir. 1983) (Posner, J.); see also Marsh v. United States, 29 F.2d 172, 174 (2d Cir. 1928) (L. Hand, J.) ("[I]t would be unreasonable to suppose that [the Federal Government's] purpose was to deny itself any help that the states may allow."). And this understanding comports with, and is reflected by, the long history of immigration detainers being sent to State and local law enforcement agencies (as discussed above).

Given Congress's pre-eminent authority over immigration matters vis-à-vis the States, see, e.g., De Canas v. Bica, 424 U.S. 351, 354-55 (1976), Congress has preempted state activity with regard to certain provisions of immigration law, by carefully circumscribing when state officials may "perform the functions of an immigration officer" in other circumstances, Arizona v. United States, 132 S. Ct. 2492, 2506 (2012). See also 8 U.S.C. § 1103(a)(10)(permitting extension of DHS immigration authority to State officers in the event of an "imminent mass influx of aliens off the coast of the United States"); id. at § 1252c (permitting State officers to have authority to arrest and detain aliens unlawfully present after being convicted of a felony and being deported or leaving the United States (after confirming their status with DHS), until DHS can assume custody); id. at § 1324(c) (providing that "all other officers whose duty it is to enforce criminal laws" may make arrests for violating bar on bringing in and harboring certain aliens)).

However, contrary to the view advanced by Mr. Lunn, see, e.g., Br. of Pet.-App. at 22-23, the existence of these explicit statutory authorities in the INA does not mean that states *lack* inherent authority to make arrests based on federal immigration law in cooperation with the Federal Government. Indeed, the Supreme Court's decision in Arizona emphatically rejects that view. 132 S. Ct. at 2509-10. There, the Court discussed Section 1357(g)(10)(B), which permits State and local officers to cooperate with the Federal Government, without a written agreement, "in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." Arizona, 132 S. Ct. at 2507.

Section 1357(g) describes the enforcement authority of immigration officers, and elsewhere permits the Federal Government and States to voluntarily enter into written agreements whereby State officials may perform the functions of Federal immigration enforcement officials. See 8 U.S.C. § 1357(g)(1). Congress was careful to avoid the mis-impression that States could not assist immigration enforcement in cooperation with the Federal Government, see, e.g., Di Re, 332 U.S. at 589-91, absent a formal agreement to do so, by explicitly providing:

> Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State ... to cooperate with the [Department of Homeland Security] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

8 U.S.C. § 1357(g)(10)(B). The Arizona majority opinion gave examples of such cooperation, including "provid[ing] operational support in executing a warrant," "allow[ing] federal immigration officials to gain access to detainees held in state facilities" and "responding to requests for information about when an alien will be released from their custody." 132 S. Ct. at 2507 (citation omitted). These forms of cooperation are to be distinguished from the Arizona statute that was at issue in that case, which permitted

“state officers to arrest an alien for being removable *absent* any *request, approval, or other instruction from the Federal Government*,” and held that such unilateral State enforcement did not fall within the cooperative enforcement authority contemplated by section 1357(g). See 132 S. Ct. at 2507 (emphasis added).

Since Arizona, Federal appellate courts have held that State officials’ engaging in the brief detention of suspected immigration-law violators, even absent a written agreement, is lawful and consistent with Arizona where such officers “arrest aliens for civil immigration violations” at the “direction or authorization by federal officials.”[14] Santos v. Frederick Cnty. Bd. of Comm’rs, 725 F.3d 451, 466-67 (4th Cir. 2013) (recognizing how local police may detain and transport an alien *after* they have received express direction from federal officials). For example, in United States v. Ovando-Garzo, the Eighth Circuit held that a state trooper's identification of unlawfully present aliens, communication with the U.S. Border Patrol (another DHS component agency), and detention of those aliens at the

[14] And, at the very least, jurisdictions that have signed a written agreement under 8 U.S.C. § 1357(g) to have their officers perform functions of Federal immigration officers can honor ICE detainer requests.

request of the Border Patrol until it could take them into custody, were not unilateral and did not exceed the scope of the "cooperation" authority under Section 1357(g)(10)(B). 752 F.3d 1161, 1164-65 (8th Cir. 2014) (citing Arizona's discussion of Section 1357(g)(10)). Similarly, in United States v. Quintana, the court held that a State officer was authorized under Section 1357(g)(10)(B) to detain an alien at DHS's behest who could not produce identity documentation and thus was suspected of being unlawfully present, until DHS could take him into custody the following day. 623 F.3d 1237, 1242 (8th Cir. 2010).

As Arizona and its progeny make clear, Federal law does not preempt a State's inherent authority to make arrests based on violations of civil immigration law, so long as such arrests respond to *requests* for assistance from the Federal Government and are not otherwise preempted.[15] See 132

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[15] ICE relies upon numerous partnerships with State law-enforcement agencies to identify certain removable aliens. Specifically, State and local arrestees' fingerprints are voluntarily sent to the Federal Bureau of Investigation's ("FBI") National Crime Information Center, which uses its Integrated Automatic Fingerprint Identification System to send those fingerprints to ICE's Automated Biometric Identification System. This automatically notifies ICE whenever the fingerprints of a State or local arrestee match those of a person previously encountered and fingerprinted by immigration officials. It also notifies ICE when the individual's fingerprints do not match fingerprint records in ICE records. ICE will then review other databases to

S. Ct. 2507 (discussing examples). And that is precisely what a State or local law enforcement officer does when he or she voluntarily complies with the Federal Government's requests contained in an immigration detainer. Many States have consequently chosen to work with the Federal Government by sending biometric information (such as fingerprints) of all persons booked in their local jails, allowing local enforcement agencies to better understand whom they are detaining. See supra n.14. Under such circumstances, unless a State government has affirmatively cabined its own police power, its officers may help the Federal Government with immigration arrests. Arizona, 132 S. Ct. at 2501 ("In preemption analysis, courts should assume that 'the historic police powers of the States' are not superseded 'unless that was the clear and manifest purpose of Congress.'" (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947))).

C. Immigration Detainers Provide Probable Cause, Such As Where The Individual Has Previously Been Ordered Removed, For State Officers To Detain Someone.

Again, Mr. Lunn was issued a final order of removal on June 25, 2008. See Exhibit B. Under these circumstances, the detainer provided the Commonwealth with probable cause to

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determine whether the person is an alien present in the United States illegally or is otherwise removable.

believe that he was a removable alien because an Immigration Judge had already entered a final order of removal against him almost a decade ago. Ibid. Simply put, that is probable cause under the Fourth Amendment. See Commonwealth v. Storey, 378 Mass. 312, 321 (1979) ("[P]robable cause exists where, at the moment of arrest, the facts and circumstances within the knowledge of the police are enough to warrant a prudent person in believing that the individual arrested has committed or was committing an offense.").

This Court and the Supreme Court have repeatedly noted how probable cause is a fluid, fact-intensive inquiry that is "incapable of precise definition," but all conceptions of probable cause boil down to a requirement of "a reasonable ground for belief of guilt" that "must be particularized with respect to the person to be searched or seized." Maryland v. Pringle, 540 U.S. 366, 370-71 (2003)(internal quotation marks and citations omitted); Commonwealth v. Stewart, 469 Mass. 257, 262 (2014). ICE only issues detainers when there is probable cause to arrest an individual on the basis that he is a removable alien.[16] That standard was met in this case.

[16] Beginning on April 2, 2017, all ICE detainers will be issued with a warrant under 8 U.S.C. § 1226. Nevertheless, the statutory standard for immigration enforcement--including

The amount of particularized evidence in this case equals, if not surpasses, the evidence supporting the valid probable-cause determinations upheld by the Eighth Circuit in both Ovando-Garzo and Quintana. In Ovando-Garzo, a State officer relied upon the aliens' admission of unlawful presence, but did not yet have any final orders of removal against them. 752 F.3d at 1162-64. And in Quintana, a State trooper validly detained the alien until DHS officers could arrive solely on the basis of the trooper and the DHS agent's immediate inability to verify the alien's identity and immigration status on the basis of his proffered identification document. 623 F.3d at 1238.

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state officers upon written agreement or in cooperation with federal authorities, see 8 U.S.C. § 1357(g)--to arrest someone for an immigration offense without a warrant requires that the officer have "reason to believe" that (1) "the alien so arrested is in the United States in violation of any such law or regulation" concerning the admission, exclusion, expulsion, or removal of aliens, (2) "is likely to escape before a warrant can be obtained for his arrest," and (3) the alien is taken without delay for examination by DHS. See id. at § 1357(a)(2) & (d) (providing for detention by State official who has "reason to believe" alien is unlawfully present and "expeditiously informs" DHS, which decides to issue a detainer); 8 C.F.R. § 287.7(a) ("The detainer is a request that [a local law enforcement] agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.") "Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause." Quintana, 623 F.3d at 1239 (collecting cases).

In a similar vein, other courts have ruled that a final order of removal against an alien establishes probable cause. For example, the Court in Clackamas Cnty.–-a case upon which the parties and amici rely heavily--specifically explained that probable cause exists "when a[n alien] is ... subject to a warrant for arrest or an order of removal or deportation." 2014 WL 1414305, at *11; accord People v. Xirum, 993 N.Y.S.2d 627, 630 (N.Y. Sup. Ct. 2014) ("[A]n order of removal or deportation provides the [State corrections department] with probable cause to hold [the] defendant for DHS.").

D. State Officers May Rely Upon A Federal Officer's Determination That Probable Cause Exists That An Individual Is A Removable Alien, Such As Where The Individual Has Previously Been Ordered Removed.

Commonwealth officers also may rely upon Federal officers' communications that probable cause exists for an alien's removability. Specifically, the information DHS obtained concerning Mr. Lunn's unlawful status may be imputed to State officers under a straightforward application of the "fellow officer" or "common knowledge" doctrine, which courts have uniformly extended to the immigration enforcement context.

Under this principle, the validity of a search or seizure "turns on whether the officers who issued the flyer [identifying the suspect] possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance." United States v. Hensley, 469 U.S. 221, 231 (1985) (citing Whiteley v. Warden, 401 U.S. 560, 564, 568 (1971)). "[W]here law enforcement authorities are cooperating ... the knowledge of one is presumed shared by all." Illinois v. Andreas, 463 U.S. 765, 772 n.5 (1983); accord Commonwealth v. Gullick, 386 Mass. 278, 283 (1982) (probable cause formed on the basis of collective observations of police); Commonwealth v. Gant, 51 Mass. App. Ct. 314, 318 (2001) ("Both officers were engaged in a cooperative effort ... [and] we may consider the complete picture."); Commonwealth v. Peters, 48 Mass. App. Ct. 15, 19 (1999) (observations of trooper communicated to another, and even if not communicated, are imputed to the other).

This doctrine recognizes that effective law enforcement requires that officers be able to "'act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information.'" Hensley, 469 U.S. at 231 (quoting United States v. Robinson, 536 F.2d 1298, 1300 (9th Cir. 1976)). Thus, searches and seizures by local officers at the request of federal Drug Enforcement Agency investigators are regularly upheld against Fourth Amendment challenges where the "DEA agents asked local law enforcement officers to stop a specifically-identified vehicle, and the local officers had no knowledge of the facts underlying the DEA's probable cause." United States v. Williams, 627 F.3d 247, 253 (7th Cir. 2010); United States v. Celio, 945 F.2d 180, 183 (7th Cir. 1991) (even though state police's stop and search of a vehicle was based only on "bald assertion" by DEA that "they suspected drug trafficking," DEA's sufficient basis for probable cause could be imputed to cooperating local officials); United States v. Rodriguez, 831 F.2d 162, 165-66 (7th Cir. 1987) (although officer who made the stop had no knowledge of the factual basis and DEA offered only a "skeletal" request for assistance, the "state trooper was ... acting as an extension or agent of the DEA agent and she could act on the DEA agent's suspicions"). As the Ninth Circuit has explained, "[t]he accepted practice of modern law enforcement is that an officer often makes arrests at the direction of another law enforcement officer even though the arresting officer himself lacks actual, personal knowledge of the facts supporting probable cause." United States v. Ramirez, 473 F.3d 1026, 1037 (9th Cir. 2007) (citation omitted)(holding that officer had probable cause for arrest based on information concerning alleged drug activity shared by officers collectively on narcotics task force).

Courts have uniformly extended the "fellow officer" rule to the immigration context. For example, in Liu v. Phillips, the First Circuit upheld qualified immunity for a local officer who arrested an alien at the direction of an INS officer for a suspected violation of the immigration laws. 234 F.3d 55, 57-58 (1st Cir. 2000) (Boudin, J.) (observing how "a police force could not function without reasonable reliance on the statements and efforts of others," and finding nothing "untoward in [the local officer's] behavior in assisting" the INS agent with the arrest). In Garcia v. Speldrich, the court similarly held that qualified immunity applied for two State conservation officers who detained several individuals based on information provided by ICE officers who had interrogated the individuals. No. 13–CV–3182, 2014 WL 3864493, at *8-9 (D. Minn. Aug. 6, 2014). And in Smith v. State, the Third District Court of Appeal of Florida upheld a stop by local police based on the reasonable suspicion provided by an immigration officer that the defendant was in the country illegally. 719 So. 2d 1018, 1022 (Fla. Dist. Ct. App. 1998); accord United States v. Mejia-Chicas, 287 Fed. App'x 830 (11th Cir. 2008) (unpublished) (upholding a traffic stop and detention by a State police officer based on a request and information from an ICE officer).

In this case, the "fellow officer" rule permits DHS's probable cause to believe that Mr. Lunn was removable (and, in fact, had already been ordered removed) to be imputed to the Commonwealth's officers. See Xirum, 993 N.Y.S.2d at 631, ("Similar to the fellow officer rule that permits detention by one police officer acting on probable cause provided by another, the [State] had the right to rely upon [a detainer issued by] the very Federal law enforcement agency charged under the law with 'the identification, apprehension, and removal of illegal aliens from the United States.'" (quoting Arizona, 132 S. Ct. at 2500)). Based on the fact that ICE had communicated its determination that probable cause existed to believe Mr. Lunn was removable (as evidenced by his past order of removal in Exhibit B), the Commonwealth was legally permitted to assist DHS in both his detention and transfer, and had more than sufficient probable cause to detain him until ICE could arrive to take him into federal custody.

II. THE TEMPORARY DETENTION OF AN ALIEN SUBJECT TO A FINAL ORDER OF REMOVAL, PURSUANT TO AN IMMIGRATION DETAINER, DOES NOT VIOLATE THE FOURTH AMENDMENT

Petitioner-Appellant and amici contend that immigration detainers violate the Fourth Amendment of the United States Constitution and Article 14 of the Massachusetts Declaration of Rights. Specifically, they note how detainers are not warrants, nor a court order, and do not themselves confer probable cause to detain an alien who would otherwise not be subject to jail or imprisonment. See, e.g., Br. of Pet.-App. at 37. But these arguments improperly attempt to impose criminal procedural requirements onto the civil administrative processes of deporting removable aliens, and in any event do not cast doubt on the detention at issue here.

A. There Is No Fourth Amendment Requirement That An Immigration Detainer Be Issued By A Neutral Magistrate.

The Fourth Amendment has long permitted civil immigration arrests and detentions notwithstanding the fact that the probable-cause determinations for such violations are made by administrative officers rather than a neutral magistrate. In the criminal context, the Fourth Amendment requires a neutral and detached magistrate to determine whether probable cause exists for an arrest. This must occur either before the arrest (via a warrant), or promptly after a warrantless arrest, which generally means 48 hours. See Gerstein v. Pugh, 420 U.S. 103, 125 (1975). But the analysis has *always* been different in the civil immigration context.

Consequently, a neutral magistrate does not make any probable-cause determination for immigration warrants, which are issued by DHS officers--not an immigration judge. 8 U.S.C. § 1226(a); see also 8 C.F.R. § 287.5(e)(2) (listing officers authorized to issue a warrant). The only situation when a neutral magistrate might have been involved is where, as here, an alien was arrested pursuant to a final order of removal. At that point, an immigration judge has previously found not merely that probable cause exists to believe the alien is removable, but has definitively ordered that he be removed from the United States. See, e.g., 8 U.S.C. § 1229a; Exhibit B.

Like the immigration detainers at issue in this case, statutes providing for removal from the United States have historically authorized the arrest of removable aliens based upon the determination of an authorized executive official. See, e.g., Act of June 25, 1798, ch. 58, § 2, 1 Stat. 571

(signed by President Adams); Act of Oct. 19, 1888, ch. 1210, 25 Stat. 566; Act of Mar. 3, 1903, ch. 1012, § 21, 32 Stat. 1218; Act of Feb. 20, 1907, c. 1134, § 20, 34 Stat. 904; Act of Feb. 5, 1917, ch. 29, § 19, 39 Stat. 889; Act of Oct. 16, 1918, ch. 186, § 2, 40 Stat. 1012; Act of May 10, 1920, ch. 174, 41 Stat. 593; Internal Security Act of 1950, ch. 1024, Title I, § 22, 64 Stat. 1008. As the Supreme Court has put it, there is "overwhelming historical legislative recognition of the propriety of administrative arrest[s] for deportable aliens[.]" Abel v. United States, 362 U.S. 217, 233 (1960); see also Reno v. Flores, 507 U.S. 292, 309-10 (1993) (rejecting automatic review by an immigration judge of INS initial deportability and custody determinations for juvenile aliens and reversing en banc decision applying Gerstein to immigration proceedings).

In Abel, the Court addressed an analogous argument by the Defendant--a Soviet spy who was interrogated by the FBI in his Manhattan hotel room based on an administrative immigration arrest warrant. Id. at 230-34. The Defendant argued that his arrest, incidental search, and weeks-long immigration detention in Texas was invalid because it was never sanctioned by a neutral magistrate. After two rounds of oral argument and briefing on the issue, Justice

Frankfurter's opinion for the Court devoted five pages (of obiter dicta) to rejecting this claim. See also State v. Rodriguez, 317 Or. 27, 42-43 (1993) (administrative immigration arrest warrant was not "unreasonable" under Fourth Amendment); Jean v. Nelson, 727 F.2d 957, 974 n.24 (11th Cir. 1984) (en banc), aff'd, 472 U.S. 846 (1985) ("[A]liens may be arrested without a warrant for deportation ... since deportation is not considered 'punishment[.]'"); Babula v. INS, 665 F.2d 293, 298 (3d Cir. 1981); Spinella v. Esperdy, 188 F. Supp. 535, 540-41 (S.D.N.Y. 1960) (noting "the unsoundness of th[is] constitutional attack").

Regarding due process arguments, once an alien is in Federal custody and placed into immigration removal proceedings before an immigration judge, there are built-in safeguards permitting the alien to test the legality of his detention. For example, an alien can request a bond redetermination hearing, see 8 C.F.R. § 1003.19, and has an "immediate[]" opportunity to challenge his mandatory pre-removal-order detention as a criminal alien at a "Joseph" hearing. Demore v. Kim, 538 U.S. 510, 514 (2003) (citing 8 C.F.R. § 3.19(h)(2)(ii) and In re Joseph, 22 I. & N. Dec. 799 (BIA 1999)). And if the Federal Government fails to timely remove aliens who have received a final order of removal, they may obtain release through petitioning for a writ of habeas corpus if there is no "significant likelihood" that they will be removed "in the reasonably foreseeable future." Zadvydas v. Davis, 533 U.S. 678, 701 (2001).

B. Fourth Amendment Criminal Procedural Requirements Have Never Been Imposed On The Civil Immigration System--And For Good Reason.

Even the Gerstein decision (which Petitioner-Appellant and amici repeatedly cite for support) is clear that its requirement for a neutral and detached magistrate is specific to criminal proceedings. 420 U.S. at 125 n.27. As the Court put it, "[t]he Fourth Amendment was tailored explicitly for the *criminal* justice system.... Moreover, the Fourth Amendment probable cause determination is in fact only the first stage of an elaborate system, unique in jurisprudence, designed to safeguard the rights of those *accused of criminal conduct*.... [C]ivil procedures ... are inapposite and irrelevant in the wholly different context of the criminal justice system." Id. (emphases added). This is an important point because it goes back to the fundamental distinction between criminal and immigration procedures: the latter has always been understood as a creature of civil law. See, e.g., Rhoden v. United States, 55 F.3d 428, 432 n.7 (9th Cir. 1995) (per curiam) (distinguishing the Fourth Amendment analysis for detention "[i]n the context of a criminal arrest" from the analysis involved for civil immigration detentions (citing Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 56-58 (1991))).

This explains why under the INA, warrants may be issued by DHS's own officials, 8 U.S.C. § 1226(a), and warrantless arrests are authorized to be made by DHS officials, id. at § 1357. See also United States v. Garcia-Martinez, 228 F.3d 956, 961 (9th Cir. 2000) (rejecting argument that INS enforcement employees are inherently biased adjudicators). In short, courts have "frequently ... upheld administrative deportation proceedings shown ... to have been begun by arrests pursuant to" such processes. Abel, 362 U.S. at 233-34. This "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation" confirms that the Fourth Amendment has never been understood to require what Mr. Lunn now insists must be the case. Id. at 234; see also id. at 230 ("Statutes authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time. It would emphasize the disregard for the presumptive respect the Court owes to the validity of Acts of Congress, especially when confirmed by uncontested historical legitimacy, to bring into question for the first time such a long-sanctioned practice of government[.]"); cf. United States v. Tejada, 255 F.3d 1, 3-4 (1st Cir. 2001) (holding that alien arrested and detained pursuant to 8 U.S.C. §1357(a)(2) is subject to civil detention, which "does not trigger the protections of [Federal Rule of Criminal Procedure]5(a)," and, accordingly, "[t]he requirement that a magistrate evaluate his detention within 48 hours of his arrest is therefore inapplicable").

An effective immigration enforcement system would be egregiously undermined if the probable cause determination needed to be made by a neutral magistrate, rather than an immigration officer. Hundreds of thousands of immigration arrests are made each year.[17] Moreover, requiring such review for these apprehensions would distract magistrates from their primary duties of adjudicating cases. And the benefit of such review would be limited because the probable-cause determination is relatively straightforward in immigration

[17] See, e.g., "FY 2016 ICE Immigration Removals," U.S. Immigration and Customs Enforcement, https://www.ice.gov/removal-statistics/2016#wcm-survey-target-id (last visited Mar. 27, 2017) (noting that DHS apprehended 415,816 aliens in fiscal year 2016); "Infographics 2015," U.S. Dep't of Homeland Sec., https://www.dhs.gov/immigration-statistics/visualization/2015 (last visited Mar. 27, 2017) (showing 462,388 apprehensions in fiscal year 2015).

cases: If an alien is present in the United States, DHS can often readily determine whether he was admitted or paroled. If not, that fact will alone demonstrate probable cause. If so, DHS can often swiftly determine whether the alien has overstayed or otherwise violated the terms and conditions of his authorized period of admission or parole. Requiring review by a neutral magistrate for all cases would impose a tremendous cost on the effective administration of the immigration laws, with little benefit in terms of substantive protections for individual aliens.

These same considerations are at play when other forms of legal process authorize temporary detentions, including detainers or holds issued by non-judicial entities. See Chavez v. City of Petaluma, No. 14-CV-5038, 2015 WL 6152479, at *6, *11 (N.D. Cal. Oct. 20, 2015) (dismissing a claim for allegedly improper detention where the plaintiff failed to allege that the parole hold/detainer lodged against her in county jail (by a “parole agent”) was not facially valid, and explaining that the plaintiff has “not asserted any allegations to show [the sheriff] was not acting pursuant to a facially valid detainer”); Puccini v. United States, No. 96-2402, 1996 WL 556987, at *1 (N.D. Ill. Sept. 26, 1996) (dismissing claims against defendants who held the plaintiff in State custody while subject to a Federal criminal detainer, and explaining that the defendants were "entitled to rely upon a duly issued and outstanding federal detainer"); Gardner v. Cal. Highway Patrol, No. 2:14-CV-2730, 2015 WL 4456191, at *16 (E.D. Cal. July 20, 2015) (explaining that a county could reasonably rely on a facially valid probable-cause declaration from a highway patrol officer to detain the plaintiff in jail). There simply is no principled distinction warranting respecting detainers in other circumstances issued by non-judicial entities, but not here, particularly in these circumstances where Federal immigration interests are paramount and a final order of removal is outstanding.

III. THIS CASE IS A POOR VEHICLE FOR ADDRESSING THE CONSTITUTIONALITY OF IMMIGRATION DETAINERS WRIT LARGE

The parties ask the Court to issue a sweeping decision addressing the constitutionality of the federal immigration detainer scheme as a facial matter. The Federal Government, however, urges a more modest course. This case involves only one alien, presently subject to detention pending the execution of his nearly ten-year-old final order of removal. His arrest was thus plainly lawful under Federal law, his detainer only extended his state criminal detention by "hours," and he is subject to mandatory detention under

Federal law during a removal period of presumptively 90 days. 8 U.S.C. § 1231(a)(1)(A). The traditional rule in both Federal and Commonwealth courts is to decide particular concrete questions--not abstract questions concerning third parties. See Los Angeles Police Dep't v. United Reported Publ'g Corp., 528 U.S. 32, 38-39 (1999); Commonwealth v. Pon, 469 Mass. 296, 299-300 n.7 (2015) (courts "typically decline to decide constitutional questions unnecessarily" and observing a "practice of judicial restraint in the realm of constitutional matters"). This rule of judicial prudence is especially apt here.

First, this case involves an alien who is subject to a final order of removal. He is thus not similarly situated to an alien who is subject to an immigration detainer on other grounds. And even though "[t]here is no categorical bar to mounting a facial challenge under the Fourth Amendment, ... Plaintiffs assume a demanding burden," Bell v. City of Chicago, 835 F.3d 736, 738 (7th Cir. 2016). They must "establish that [the] 'law is unconstitutional in all of its applications,'" City of Los Angeles v. Patel, 135 S. Ct. 2443, 2449 (2013) (quoting Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 (2008)). Other courts facing such sweeping arguments have declined "challenge[s] to [search or seizure] techniques not employed in a particular case." United States v. Mohamud, 843 F.3d 420, n.21 (9th Cir. 2016). The Court should accordingly limit its consideration to Mr. Lunn's circumstances. See United States v. Salerno, 481 U.S. 739, 745 (1987).

Second, recent changes to Federal detainer policy applying prospectively distinguish Mr. Lunn's case, and any others similarly situated, from any such case that may arise in the future. For example, ICE's new detainer policy, set to go into effect on April 2, 2017, requires all immigration detainer forms to be accompanied by either a warrant for the arrest of the alien (signed by an authorized immigration officer) or a copy of a warrant of removal/deportation (also signed by an authorized immigration officer).[18] Given these changes and the specific factual circumstances of Mr. Lunn's case, this is simply not a case "where the issue [is] one of public importance, where it was fully argued on both sides, where the question [is] certain, or at least very likely, to arise again *in similar factual circumstances*[.]" Lockhart v. Attorney Gen., 390 Mass. 780, 783 (1984) (emphasis added).

[18] Under ICE's new "Form I-247A," immigration officers must continue to establish probable cause to believe that the subject is an alien who is removable from the United States before issuing a detainer with a Federal, State, local, or tribal law enforcement agency.

Accordingly, to the extent the Court is inclined to issue a precedential decision, the United States submits that the Court should limit its decision to the facts before it on appeal, and decline the named parties' and amici's invitation to issue a broad, facial invalidation of a detainer system that no longer exists. Under such circumstances, the decision below should not be disturbed and this Court should leave further changes to Congress, DHS, and the General Court of Massachusetts in the first instance.

CONCLUSION

For these reasons, the United States respectfully asks that this Court consider this amicus brief and: (1) hold that State and local law enforcement in the Commonwealth may temporarily detain an alien subject to a final order of removal in response to a Federal immigration detainer indicating that the alien is subject to such an order, (2) hold that the brief detention of such an alien does not violate any Federal constitutional right he may have, and (3) limit the scope of its holding to the factual circumstances of this case (or to those similarly situated), reserving the abstract, facial issues raised by the parties for resolution in a case actually raising those issues in the context of the currently operative Federal immigration detainer policy.

Dated: March 27, 2017

Respectfully Submitted,

CHAD A. READLER
Acting Asst. Attorney Gen.

WILLIAM C. PEACHEY
Director
Office of Immigration Litigation
District Court Section

/s/ Erez Reuveni
EREZ REUVENI
Senior Litigation Counsel

/s/ Joshua S. Press
JOSHUA S. PRESS
JOSEPH P. DARROW
Trial Attorneys
U.S. Dept. of Justice
Civil Division
P.O. Box 868
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 305-0106

Counsel for Amicus Curiae

EXHIBIT G

HOUSTON

Did Culberson misfire when he took a shot at 'sanctuary city' funds?

Culberson says funds cut; briefs show otherwise

By Kevin Diaz | March 18, 2017 | Updated: March 19, 2017 9:02am

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Photo: Jon Shapley Jon Shapley, Staff

U.S. Rep. John Culberson, shown at a Houston Housing Authority earlier this month, says of the jurisdictions around the nation that are contesting President Donald Trump's threat to yank federal funds: "Who cares? They're going to lose. … No judge can compel me to release the money."

WASHINGTON - Last July, a year after the shooting death of California resident Kate Steinle intensified the national debate over illegal immigration, Houston Republican John Culberson declared a single-handed victory against sanctuary cities like San Francisco.

Employing a stealth budget maneuver as chairman of a House panel that controls Justice Department spending, Culberson announced that jurisdictions like San Francisco - nay the entire state of California - would be denied millions of dollars in law enforcement grants unless they complied with federal law on sanctuary cities.

"Today this law is being fully enforced for the first time," Culberson said at the time. "State and local governments must now choose between receiving federal law enforcement grant money or protecting dangerous criminal aliens. They can no longer do both."

Except that state and federal records tell a much different story.

Officials in California, Connecticut and other jurisdictions in Culberson's cross-hairs say nothing has changed. Though Culberson claims to be "judge and jury" in the matter, government briefs filed in recent lawsuits challenging President Donald Trump's threatened funding cuts for sanctuary cities also show that officials have yet to take action - and likely face lengthy litigation if they do.

RELATED

The foreign workers behind the rodeo carnival

What to do if you or someone you love could be deported

The 10 cities and states targeted by Culberson - including New York City, Chicago and the state of Connecticut - continued to get law enforcement grants worth a total of $96 million in late 2016, even though Culberson says the Justice Department had "certified" them as sanctuary city violators last July.

No Texas cities are on the list, although Culberson has said that Travis County is a sanctuary.

Officials from two of the largest jurisdictions that were implicated - California and Connecticut - say they wholly comply with all federal laws and fully expect to receive their 2017 allocations.

"San Francisco is eligible to receive federal grants, and we will continue to apply for them," said San Francisco City Attorney Dennis Herrera.

Connecticut officials say the Justice Department asked them to outline their policies, but they received no indication they are cut off or ineligible for grants.

"Nobody's had any grants withheld," said Mike Lawlor, the state's undersecretary for criminal justice policy and planning.


Are Trump's immigration orders signaling the demise of due

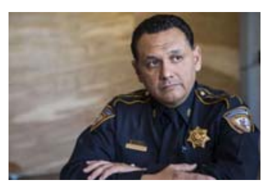

Houston leaders try to ease worries of anxious immigrant


Deported immigrant trying to adjust to life alone in the foreign


Jackson Lee demands Trump reopen local deportation case


Texas builders fear fallout of immigration crackdown on workforce


New guidelines have immigrants scrambling for answers on legal


Sheriff cuts ties with ICE program over immigrant detention


Immigrants here illegally shadowed by fear of deportation


The Million: Immigrants from around the world are transforming

Culberson insists they're wrong and that starting this year, they're "in for a very unpleasant surprise."

"I've already had them certified as violators," Culberson said in an interview last week in which he claimed a "quasi-judicial role as chairman of a subcommittee … using the power of the purse to enforce the law."

Culberson, in his ninth term in Congress, says he has opened a new front in the GOP battle against jurisdictions that don't fully cooperate with federal Immigration and Customs Enforcement agents, a gambit that he says is now being copied on a wider scale by Trump, who also has threatened to block funding to localities with so-called sanctuary city policies.

"What I've done here is totally novel," Culberson said. "I'm blazing a new trail."

Over the past five years, local and state governments across the nation have received over $3.4 billion in federal law enforcement grants. California got more than $68 million last year. Connecticut got some $2.7 million.

Officials in the targeted states, however, say they foresee no cutoff in government aid from Culberson's move. They note that Trump's January order mandating a review of funding for sanctuary cities specifically exempts grants "deemed necessary for law enforcement purposes."

Privately, some of Culberson's critics see him working to protect his right flank against potential primary rivals looking for a quick victory in a messy standoff over immigration. Various efforts to crack down on deportees and sanctuary cities have been stymied in Congress, including "Kate's Law," which was named after Kate Steinle.

"I've been working on this for years," Culberson said. "But Kate Steinle's murder just pushed me over the edge."

Trump moves forward on immigration

President Donald Trump has taken the first steps toward curbing immigration and beefing up border security by building a wall along the U.S.-Mexico border. Things to know about U.S. immigration:

Some border barriers exist

Where fencing, vehicle barriers and other impediments to travel are already located along the roughly 2,000-mile Southwestern border:

Source: Department of Homeland Security

While Republicans have focused on the threat to public safety posed by criminals coming over the border illegally, Democrats see it as counterproductive to turn local police into immigration agents. Immigrants who witness or suffer crimes, they argue, are less likely to call the cops if it might lead to a visit from ICE.

But for Culberson, as for most Texas Republicans, his most pressing political threat does not come from the left. One of his GOP primary opponents last year was Maria Espinoza, co-founder of The Remembrance Project, a nonprofit group that advocates for the families of people killed by immigrants living in the U.S. illegally.

She was on hand in Washington when Trump signed his executive order on immigration. She also has been critical of Culberson, accusing him of supporting former President Barack Obama's "executive amnesty" by voting for a 2016 government spending bill that did not cut off funds to sanctuary cities.

'Like the CFO' of Justice'

Culberson's maneuver was rolled out in July with little fanfare, receiving scant attention outside of the conservative press, including Breitbart.com, the alt-right platform of Trump strategist Steve Bannon.

But Culberson recently has started to remind voters that the blueprint for action is his.

"I personally made sure that money is cut off to these sanctuary cities," he told constituents in a March 1 tele-town hall. "I didn't get a lot of publicity about it, because I was concerned that once President Obama heard about it or (U.S. Rep. Nancy) Pelosi of the Democrats, that they'd go down to the floor and start waving their arms and raising Cain."

"I'm like the CFO of the Department of Justice," he continued. "I was able to cut off money to sanctuary cities beginning last summer. So it's done, and now the Trump administration has expanded that policy nationwide."

The disconnect stems in part from different readings of a 1996 law intended to ensure local cooperation with federal immigration agents.

To Culberson, the law bars state and local officials from interfering "in any way" with requests for personal immigration information by federal authorities.

Lawyers for California and Connecticut read the law more narrowly. They say it bars local officials only from restricting "information concerning an individual's citizenship or immigration status."

That's different from enforcing ICE requests to hold immigrants who are subject to deportation, or to notify federal agents about prisoners' release dates - something most sanctuary cities won't do without criminal warrants.

That is the reason San Francisco jailers released Steinle's alleged killer, Juan Francisco Lopez-Sanchez, a felon on probation in Texas who had been deported to Mexico five times.

There is no legal definition of "sanctuary city." The Trump administration says it is still working on one as part of its executive order. But localities are typically deemed to be sanctuary jurisdictions when they decline to hold or share information about their prisoners for ICE

That's the standard the Texas Legislature is using this year as it debates legislation pushed by Gov. Greg Abbott to punish sanctuary cities.

Some state officials say that requiring local jailers to hold immigrants beyond their legal release dates not only violates Fourth Amendment search and seizure protections but also the 10th Amendment rights of states against being "commandeered" by federal authorities.

ICE 'should get warrant'

"Here's what's really going on," said Michael Wishnie, who teaches in Yale Law School's Worker and Immigrant Rights Advocacy Clinic. "ICE should stop cutting corners and trying to trick local jails and police into joining in illegal immigration round-ups. If ICE wants local police to arrest someone, the agency should get a judicial warrant, just like the FBI, DEA and any other professional law enforcement agency does."

Wishnie says sanctuary city detention policies don't violate the law. Culberson maintains that his interpretation of the Justice Department policy on sanctuary cities is beyond dispute.

"They're welcome to their opinion, but I'm in charge of the federal treasury," he said. "It's my responsibility to be judge and jury of when and where federal dollars are allocated."

It was in Culberson's role as chairman of the House Appropriations subcommittee on Commerce, Science and Justice that he was able to press then-Attorney General Loretta Lynch last year toassess whether all Justice Department grant recipients complied with the 1996 law - the same law Trump cited in his executive order.

In a behind-the-scenes exchange that Culberson likens to a "chess game," his cudgel was the Justice Department's annual funding requests, which go through his committee.

As part of the review, Justice Department Inspector General Michael Horowitz zeroed in on 10 major grant recipients, a group Culberson calls "the Top 10 jurisdictions on the Hit Parade."

The study, first made public in July, found that the 1996 law "does not specifically address restrictions by state and local entities on cooperation with ICE regarding detainers." Horowitz also noted that the Department of Homeland Security, which includes ICE, had determined that civil immigration detainers are "voluntary' - and therefore unenforceable.

Nevertheless, Horowitz concluded that most, if not all, of the 10 jurisdictions in question limited cooperation with ICE in some way. While not necessarily in violation of the 1996 law, Horowitz wrote, "we believe these policies and others like them may be causing local officials to believe and apply the policies in a manner that prohibits or restricts cooperation with ICE in all respects. That, of course, would be inconsistent with and prohibited by" the 1996 law.

For Culberson, the key word was "inconsistent."

Despite the careful language in Horowitz's report, Culberson said the inspector general "made it official" that the 10 jurisdictions violated Justice Department sanctuary city policies, declaring them ineligible for further grants.

"That's enough. Trust me," said Culberson, adding that he received a verbal reassurance from Horowitz. "They were reluctant to use stronger language, so I worked it out with the inspector general," he said.

A spokesman for Horowitz declined comment.

Culberson also relied on a July 7 Justice Department "guidance" clarifying that the 1996 law applies to law enforcement grants. But there was a catch: The memo did not say whether the law specifically required compliance with ICE detainer requests. To the contrary, it noted that the 1996 law imposed no "affirmative obligation" on states and localities to collect information about people's immigration status, nor to "take specific actions upon obtaining such information."

The same day, Culberson was notified about the guidance in a letter from then-Assistant Attorney General Peter Kadzik. The letter noted, however, that the Office of Justice Programs "already" required prospective grant applicants to certify that they complied with "all applicable" federal laws, which means they were getting money even if they didn't honor ICE detainer requests.

To Culberson, it meant only this: "They weren't enforcing it. They are now."

But a flurry of lawsuits over Trump's immigration order suggests that the matter is far from settled.

No 'concrete' harm

California officials point to the Justice Department's response this month to a preemptive challenge by Santa Clara County, one of several jurisdictions around the nation - including San Francisco - that are contesting Trump's threat to yank their federal funds.

One of the Trump administration's arguments has been that Santa Clara's action is premature because it has not suffered any "concrete" harm, in part because there has been no finding as to who is a sanctuary city and who is not.

That interpretation was reinforced in a Justice Department letter to several members of Congress on March 7 stating that the administration is still "in the process of identifying … what actions, if any, can lawfully be taken in order to encourage state and local jurisdictions to comply with federal law."

Culberson says he's untroubled by the lawsuits.

"Who cares?" he said. "They're going to lose. I'm the one who's going to make the final decisions, along with the president. No judge can compel me to release the money."

"If you want federal money, follow federal law," he added. "Particularly if you're dealing with John Culberson and Donald Trump, who will not give you the money unless you follow federal law. You can take that to the bank."

Kevin Diaz

Houston Chronicle Washington Correspondent

EXHIBIT H

U.S. Immigration and Customs Enforcement

ENFORCEMENT AND REMOVAL OPERATIONS

Weekly Declined Detainer Outcome Report
For Recorded Declined Detainers Feb 4 – Feb 10, 2017

Summary

Pursuant to section 9(b) of Executive Order 13768, Enhancing Public Safety in the Interior of the United States, and section H of the Secretary of Homeland Security's subsequent implementation memo, *Enforcement of the Immigration Laws to Serve the National Interest,* U.S. Immigration and Customs Enforcement (ICE) is making available for public release the non-Federal jurisdictions that release aliens from their custody, notwithstanding that such aliens are subject to a detainer or similar request for custody issued by ICE to that jurisdiction. For instances of such release, the report also includes the associated individual's citizenship, detainer issued and declined dates, and notable criminal activity. ICE compiled this report based on jurisdictions with detainers that were recorded as declined between February 4, 2017 and February 10, 2017, regardless of detainer issuance date.

It should be noted that law enforcement agencies (LEA) do not generally advise ICE of when a detainer is not honored, and therefore this report represents declined detainers that ICE personnel have become aware of during their enforcement activities.

This report is comprised of four sections:

- Section I: Highest Volume of Detainers Issued between February 4, 2017 and February 10, 2017 to Jurisdictions which Restrict Cooperation with ICE
- Section II: Jurisdictions with Recorded Declined Detainers between February 4, 2017 and February 10, 2017
- Section III: Table of Jurisdictions that have Enacted Policies which Limit Cooperation with ICE
- Section IV: Report Scope and Data Fidelity

Section I: Highest Volume of Detainers Issued between February 4, 2017 and February 10, 2017 to Jurisdictions which Restrict Cooperation with ICE

During the week of February 4, 2017 and February 10, 2017, ICE issued 2,825 detainers throughout the United States. The following table reflects the jurisdictions that do not comply with detainers on a routine basis, which had the highest volume of detainers issued during the reporting period (540 to these ten jurisdictions during the reporting period). While these counties have a policy of non-cooperation or restrict cooperation, the outcome of these specific detainers is yet to be determined. Consistent with these counties' policies, ICE expects these detainers to reflect as declined in Section II of future weekly reports.

As further noted in Section IV, ICE field offices have been instructed to resume issuing detainers on all removable aliens in a LEA's custody regardless of prior non-cooperation. **As a result, the number of issued detainers will increase over the next several reporting periods**.

County	State	Issued Detainers
Los Angeles	California	162
New York City	New York	73
Kern	California	65
Clark	Nevada	54
San Diego	California	44
Orange	California	42
San Bernardino	California	32
Santa Barbara	California	24
Travis	Texas	23
King	Washington	21

Section II: Jurisdictions[1] with Recorded Declined Detainers February 4, 2017 and February 10, 2017

The following table describes the individuals released by detention location that declined detainers during the period.[2]

In sum, these jurisdictions declined 47 detainers issued by ICE[3].

The table also provides the associated country of citizenship, detainer issue and decline dates, and a notable criminal activity (charge or conviction) associated with the individual released from custody. The entries below are sorted alphabetically by state.[4] Note that an alien may have been subject to detainers in multiple jurisdictions during the time period reported.

Detention Location	County	State	Citizenship	Detainer Decline Date	Detainer Issue Date	Notable Criminal Activity
CONCORD JAIL	Contra Costa*	California*	Mexico	2/8/2017	9/25/2016	Domestic Violence (Conviction)
IMPERIAL COUNTY JAIL	Imperial*	California*	Mexico	2/9/2017	2/6/2017	Domestic Violence (Charged)
MERCED COUNTY JAIL	Merced*	California*	Mexico	2/9/2017	4/29/2016	Assault (Conviction)
ORANGE COUNTY JAIL	Orange*	California*	Mexico	2/8/2017	2/2/2017	Burglary (Conviction)
ORANGE COUNTY JAIL	Orange*	California*	Mexico	2/10/2017	11/30/2016	Cruelty Toward Child (Conviction)

[1] Jurisdictions include counties, boroughs, and parishes.
[2] According to the reporting described in Section IV.
[3] When a detainer is declined, the alien is generally released back into the community. However, there may be some instances, where despite a detainer being declined, ICE does take custody of the alien. This could occur, for example, when the alien is transferred to another jurisdiction that honors detainers, or when ICE officers make special efforts to take custody of the alien when the LEA does not meet ICE's reasonable expectations to prevent the release of a criminal alien back into the public.
[4] An asterisk after the jurisdiction name or state indicates that a policy is in place that limits or prohibits cooperation with ICE; policy details can be found in Section III.

Detention Location	County	State	Citizenship	Detainer Decline Date	Detainer Issue Date	Notable Criminal Activity
ORANGE COUNTY JAIL	Orange*	California*	Mexico	2/10/2017	11/30/2016	Domestic Violence (Charged)
TUSTIN POLICE DEPT.	Orange*	California*	Mexico	2/4/2017	3/16/2015	Drug Possession (Charged)
SONOMA CO MAIN ADULT DET	Sonoma*	California*	Mexico	2/10/2017	2/7/2017	Domestic Violence (Charged)
ADAMS COUNTY JAIL	Adams*	Colorado	Mexico	2/8/2017	11/8/2016	Narcotic Equip - Possession (Charged)
ARAPAHOE COUNTY JAIL	Arapahoe*	Colorado	Mexico	2/10/2017	2/28/2015	Failure To Appear (Charged)
DENVER JUSTICE CENTER	Denver*	Colorado	Mexico	2/8/2017	2/8/2017	Marijuana - Possession (Conviction)
JEFFERSON COUNTY JAIL	Jefferson*	Colorado	Mexico	2/9/2017	2/8/2017	Forgery Of (identify in comments) (Charged)
DC DEPT OF CORRECTIONS	Washington*	District of Columbia	El Salvador	2/8/2017	5/29/2016	Aggravated Assault - Non-family-Strongarm (Charged)
DC DEPT OF CORRECTIONS	Washington*	District of Columbia	Honduras	2/7/2017	9/25/2016	Assault (Charged)
DC DEPT OF CORRECTIONS	Washington*	District of Columbia	El Salvador	2/8/2017	12/12/2015	Robbery (Charged)
ST. LUCIE COUNTY JAIL	St. Lucie	Florida	Guatemala	2/8/2017	2/8/2017	Indecent Exposure (Conviction)

Detention Location	County	State	Citizenship	Detainer Decline Date	Detainer Issue Date	Notable Criminal Activity
NASHUA ST. JAIL	Suffolk	Massachusetts	El Salvador	2/10/2017	1/26/2017	Sex Assault (Charged)
STEARNS COUNTY SHERIFF/JAIL	Stearns	Minnesota	Guatemala	2/10/2017	2/6/2017	Public Order Crimes (Charged)
METROPOLITAN DETENTION CENTER	Bernalillo*	New Mexico	Mexico	2/9/2017	10/5/2013	Burglary (Charged)
HOBBS CITY JAIL	Lea*	New Mexico	Mexico	2/9/2017	8/1/2016	Conditional Release Violation (Charged)
HOBBS CITY JAIL	Lea*	New Mexico	Mexico	2/9/2017	8/7/2016	Domestic Violence (Charged)
SANTA FE COUNTY JAIL	Santa Fe*	New Mexico	Mexico	2/9/2017	9/19/2012	Concealing Identity (Charged)
BRONX CENTRAL BOOKING	New York City*	New York	Mexico	2/6/2017	2/6/2017	Assault (Conviction)
BRONX CENTRAL BOOKING	New York City*	New York	Dominican Republic	2/8/2017	2/1/2017	Assault (Charged)
BROOKLYN CENTRAL BOOKING	New York City*	New York	Tajikistan	2/8/2017	2/8/2017	Assault (Charged)
BROOKLYN CENTRAL BOOKING	New York City*	New York	France	2/8/2017	2/7/2017	Assault (Charged)
BROOKLYN CENTRAL BOOKING	New York City*	New York	Hungary	2/6/2017	2/3/2017	Assault (Charged)

Detention Location	County	State	Citizenship	Detainer Decline Date	Detainer Issue Date	Notable Criminal Activity
BROOKLYN CENTRAL BOOKING	New York City*	New York	St. Vincent-Grenadines	2/8/2017	2/7/2017	Assault (Charged)
MANHATTAN CENTRAL BOOKING	New York City*	New York	Georgia	2/10/2017	2/10/2017	Larceny (Charged)
MANHATTEN DET COMPLEX, NY	New York City*	New York	Nigeria	2/10/2017	2/4/2017	Assault (Charged)
NYC POLICE DEPARTMENT	New York City*	New York	Barbados	2/9/2017	2/8/2017	Sex Assault - Carnal Abuse (Charged)
QUEENS CENTRAL BOOKING	New York City*	New York	Ecuador	2/8/2017	2/8/2017	Assault (Conviction)
QUEENS CENTRAL BOOKING	New York City*	New York	Mexico	2/8/2017	2/8/2017	Assault (Charged)
RIKERS ISLAND, QUEENS, NY	New York City*	New York	Colombia	2/6/2017	7/15/2016	Burglary Tools - Possession (Conviction)
TRAVIS CTY JAIL	Travis*	Texas	Mexico	2/5/2017	2/5/2017	Assault (Charged)
TRAVIS CTY JAIL	Travis*	Texas	Mexico	2/7/2017	2/7/2017	Public Order Crimes (Charged)
MEHERRIN RIVER REGIONAL JAIL	Brunswick	Virginia	Mexico	2/8/2017	12/27/2015	Traffic Offense (Conviction)
CHESTERFIELD CO. JAIL	Chesterfield*	Virginia	Guatemala	2/8/2017	12/26/2015	Forgery (Conviction)

Detention Location	County	State	Citizenship	Detainer Decline Date	Detainer Issue Date	Notable Criminal Activity
CHESTERFIELD CO. JAIL	Chesterfield*	Virginia	Guatemala	2/8/2017	3/14/2016	Driving Under Influence Liquor (Conviction)
PAMUNKEY REG JAIL	Hanover	Virginia	El Salvador	2/8/2017	5/5/2016	Assault (Charged)
MONTGOMERY COUNTY JAIL	Montgomery	Virginia	Mexico	2/8/2017	1/5/2017	Assault (Conviction)
RICHMOND CITY JAIL	Richmond	Virginia	Honduras	2/8/2017	6/5/2016	Driving Under Influence Liquor (Charged)
CHELAN CO. REGIONAL JAIL	Chelan	Washington	Mexico	2/9/2017	9/13/2016	Assault (Conviction)
CHELAN CO. REGIONAL JAIL	Chelan	Washington	Mexico	2/8/2017	2/8/2017	Possession Of Weapon (Conviction)
COWLITZ COUNTY JAIL	Cowlitz*	Washington	Mexico	2/7/2017	2/7/2017	Cocaine - Possession (Conviction)
KENT CITY JAIL	King*	Washington	Mexico	2/9/2017	2/7/2017	Assault (Charged)
YAKIMA COUNTY	Yakima	Washington	Mexico	2/7/2017	2/1/2017	Domestic Violence (Conviction)

Section III: Table of Jurisdictions that have Enacted Policies which Limit Cooperation with ICE

All jurisdictions and their corresponding detainer ordinances listed in this document are based upon public announcements, news report statements, and publicly disclosed policies. As such, there may be other non-cooperative jurisdictions not contained in this table if publicly available information does not exist. The entries below are sorted by the date a policy was enacted in the stated jurisdiction with the most recent date first.

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Baltimore City, Maryland (Baltimore)	March 2017	Baltimore Police Commissioner	• Public statement of noncooperation with Immigration and Customs Enforcement
Tulare, California (San Francisco)	February 2017	Sheriff's Statement	• Will notify ICE five days prior to the inmates release but will not hold
Ithaca, New York (Buffalo)	February 2017	Municipal Code Change	• Will only honor "warrantless detainer requests from the federal government under limited, specified circumstances" such as violent or serious crimes or terrorist activities
Travis County, Texas (San Antonio)	January 2017	Travis County Sheriff's Office Policy on Cooperation with U.S. Immigration and Customs Enforcement	• Willing to accept requests accompanied by a court order • Willing to accept requests when the subject of the detainer request is charged with or has been convicted of Capital Murder, First Degree Murder, Aggravated Sexual Assault, or Continuous Smuggling of Persons
Iowa City, Johnson County, Iowa (Saint Paul)	January 2017	Resolution Reaffirming the Public Safety Function of Local Law Enforcement	• Willing to only accept some notifications on detainers
Boulder, Colorado (Denver)	January 2017	Boulder Municipal Code Title 12, Chapter 12-5	• Will not honor ICE detainers unless ICE has an arrest warrant for an individual
Montpelier, Vermont (Boston)	July 2016	Fair and Impartial Policing	• Will not hold individuals based solely on an ICE detainer

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
San Francisco, California (San Francisco)	July 2016	City Ordinance	• Detain an individual on the basis of a civil immigration detainer after that individual becomes eligible for release from custody.
New Orleans, Louisiana (New Orleans)	February 2016	New Orleans Police Department Manual	• Will not honor detainer without a judicial order or criminal warrant
Philadelphia, Pennsylvania (Philadelphia)	January 2016	Mayoral Executive Order (Reverts back to April 2014 policy)	• Willing to only honor ICE detainers where the alien has a prior conviction for a first or second degree felony offense involving violence and the detainer is accompanied by a judicial arrest warrant • The order also prohibits notice to ICE of pending release of subjects of interest to ICE unless the above criteria is met
Alachua, Florida (Miami)	September 2015	Sheriff's Decision	• Will not honor ICE detainer without a judicial order or criminal warrant
Amador County, California (San Francisco)	August 2015	Sheriff Statement	• Requires an accompanying court order to honor detainer.
San Mateo, California (San Francisco)	July 2015	Sheriff's Statement	• San Mateo County Sheriff's Office also does not honor Immigration and Customs Enforcement requests to detain those in the country illegally except in rare cases when the individual poses a significant threat to public safety
Humboldt, California (San Francisco)	May 2015	County Correctional Facility Procedure	• Under no circumstance shall an individual subject to deportation, absent a federal arrest warrant, be held past their release date or prevented from posting bail.
Fresno, California (San Francisco)	February 2015	Fresno County Sheriff's Administrative Order	• ICE Detainers will continue to be accepted and added. However, the detainer will not serve as a hold, or delay an inmate's release beyond the scheduled date of release.
San Benito County, California (San Francisco)	February 2015	Sheriff's Statement	• Requires a judicial determination of probable cause or a warrant from a judicial officer.
Arlington County, Virginia (Washington)	January 2015	County Sheriff's Office Decision	• Will not honor an ICE detainer unless ICE first presents the sheriff's office with a judicially issued warrant authorizing detention
San Miguel, New Mexico (El Paso)	December 2014	San Miguel Detention Policies and Procedures	• Will only detain if reimbursed

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
DeKalb County, Georgia (Atlanta)	December 2014	County Sheriff's Office Decision	• Will not honor an ICE detainer unless ICE first presents the sheriff's office with a warrant or "sufficient probable cause"
Clayton County, Georgia (Atlanta)	November 2014	County Sheriff's Office Decision	• Will not honor an ICE detainer unless ICE first presents the sheriff's office with a judicially issued warrant authorizing detention.
Chesterfield County, Virginia (Washington)	November 2014	County Jail Policy	• The county will notify ICE when a detainee is going to be released, however, they will not hold an individual for any additional time.
New York City, New York (New York City)	November 2014	A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the police department	• Will not honor ICE detainer
Erie County, Pennsylvania (Philadelphia)	October 2014	County Jails' Policy	• Will not hold individuals based on the standard I-247 ICE detainer form • Will hold individuals if an I-203 Order to Detain and an I-200 Warrant of Arrest form is submitted • Will send a list of currently held individuals upon request • Will allow ICE to inspect jail at any time and to ride-along with local law enforcement
Lycoming County, Pennsylvania (Philadelphia)	October 2014	County Prison's Policy	• Will not hold individuals solely on ICE detainers • Will notify ICE two hours prior of an inmate's release if ICE had issued a detainer
Montour County, Pennsylvania (Philadelphia)	October 2014	County Prison's Policy	• Will not honor ICE detainers
Perry County, Pennsylvania (Philadelphia)	October 2014	County Prison's Policy	• Will not honor ICE detainers without a warrant or court order • Will not arrest, detain, or transport anyone solely based on an immigration detainer or an administrative warrant
New Mexico County Jails, New Mexico (El Paso)	October 2014	County Jails' Decisions	• All county jails in New Mexico will not honor ICE detainer
Montgomery County, Maryland (Baltimore)	October 2014	County Executive's Decision	• Will not honor ICE detainers without adequate probable cause

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Prince George's County, Maryland (Baltimore)	October 2014	County Executive's Decision	• Department of Corrections will not honor ICE detainers without a warrant signed by a judge that demonstrates probable cause
Butler County, Pennsylvania (Philadelphia)	September 2014	County Prison's Policy	• Will not hold individuals solely on an ICE detainer • Staff will not allow ICE officials to have access to inmates for investigative purposes without a court order or a "legitimate law enforcement purpose…that is unrelated to the enforcement of civil immigration law"
Westmoreland County, Pennsylvania (Philadelphia)	September 2014	County Prison's Policy	• Will not honor ICE detainer without a judicially authorized warrant or court order
Colorado County Jails, Colorado (Denver)	September 2014	County Jails' Decisions	• All county jails in Colorado will not honor ICE detainer without a Judicial Warrant
Sarpy County, Nebraska (St. Paul)	September 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without a warrant
Washoe County, Nevada (Salt Lake City)	September 2014	County Sheriff's Office Decision	• Will not honor ICE detainer unless provided with a warrant which could be issued without review by a judge
Burlington County, New Jersey (Newark)	August 2014	Sheriff's Statement	• Will not honor ICE request to hold.
Delaware, Pennsylvania (Philadelphia)	August 2014	Correctional Facility's Policy	• Will not hold individuals solely based on an ICE detainer • Arrangements may be made for "in person" review of the policy
Northampton, Massachusetts (Boston)	August 2014	Mayoral Executive Order	• Will not honor ICE detainer that is non-criminal and not subject to a judicially issued warrant
Boston, Massachusetts (Boston)	August 2014	Boston Trust Act	• Will not honor ICE detainer without a criminal warrant
Del-Norte County, California (San Francisco)	August 2014	Del Norte Sheriff's Office	• All inmates being detained at the Del Norte County Jail on an immigration detainer issued by United States Immigration and Customs Enforcement (I.C.E.) must be accompanied by a judicial determination of probable cause or a judicial warrant.

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
El Dorado County, California (San Francisco)	August 2014	Sheriff's Office Procedural Order	• A person may not be held in custody solely on the basis of an immigration detainer if he or she is otherwise eligible for release from criminal custody unless a judicially approved warrant is issued.
Jefferson County, Iowa (St. Paul)	August 2014	County Jail's Decision	• Will not honor ICE detainer unless a judge has approved the move with a probable cause warrant
Iowa County, Iowa (St. Paul)	August 2014	County Jail's Decision	• Will not honor ICE detainer unless a judge has approved the move with a probable cause warrant
Benton County, Iowa (St. Paul)	August 2014	County Jail's Decision	• Will not honor ICE detainer unless a judge has approved the move with a probable cause warrant
Union County, New Jersey (Newark)	August 2014	County Counsel's Decision	• Will not honor ICE detainer without warrant, court order, or other legally sufficient proof of probable cause from ICE
Franklin County, New York (Buffalo)	August 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without warrant
St. Lawrence County, New York (Buffalo)	August 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Archuleta, Colorado (Denver)	July 2014	Sheriff's Directive	• Will not hold beyond release date but will notify
Bernalillo, New Mexico (El Paso)	July 2014	Immigration Detainers and Warrants	• Will not detain any inmate and will not delay the otherwise authorized release of any inmate, as a result of detainer requests or administrative warrants received by ICE.
Butte County, California (San Francisco)	July 2014	Sheriff's Office Order	• Requires an accompanying arrest warrant to honor detainer.
Camden County, New Jersey (Newark)	July 2014	Sheriff's Statement	• Requires court order or arrest warrant

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Dona Ana County, New Mexico (El Paso)	July 2014	County Detention Center Statement	• Will not honor detainer
Los Angeles County, California (Los Angeles)	July 2014	Sheriff's Statement	• Requires a judicial determination of probable cause or a warrant from a judicial officer.
Onondaga County, New York (Buffalo)	July 2014	County Sheriff's Office Decision	• Onondaga County Justice Center Jail will not honor ICE detainer without a signed warrant
Placer, California (San Francisco)	July 2014	Placer County Sheriff Office Procedure Manual	• No longer accept detainers unless they are accompanied by an arrest warrant signed by a judge.
Wayne County, New York (Buffalo)	July 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Rhode Island Department of Corrections, Rhode Island (Boston)	July 2014	Department of Corrections Policy from Governor	• Will not honor ICE detainer without a warrant
Hall County, Nebraska (St. Paul)	July 2014	County Corrections Decision	• Hall County Corrections will not honor ICE detainer without a warrant
Middlesex County, New Jersey (Newark)	July 2014	County Decision	• Will not honor ICE detainer unless an individual: o Is charged with a first- or second-degree crime; o Is identified as a known gang member; or • Has been subject to a final order of removal by ICE
Clark County, Nevada (Salt Lake City)	July 2014	The LVMPD Will No Longer Detain Persons on Federal Immigration Holds	• Will not honor ICE detainer
Hennepin, Minnesota (Saint Paul)	July 2014	Sheriff Statement on U.S. Immigration and Customs Detainers	• Will not honor ICE detainer absent judicial authority

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Imperial County, California (San Diego)	July 2014	Sheriff's Office Decision	• Requires an accompanying court order to honor detainer.
Rio Arriba, New Mexico (El Paso)	July 2014	County Jail Decision	• Will not honor ICE detainer
Santa Fe, New Mexico (El Paso)	July 2014	County Jail Statement	• Will not honor ICE unless the individual is accused of a serious crime
Yolo, California (San Francisco)	July 2014	Sheriff Statement	• Requires a valid and enforceable warrant signed by a judicial officer.
Bradford County, Pennsylvania (Philadelphia)	June 2014	County Correctional Facility's Policy	• Will not honor ICE detainer without paperwork that an individual has a criminal warrant or a criminal conviction • Will not hold individuals solely for the detainer and will request further information should they receive a detainer
Butler County, Kansas (Chicago)	June 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without a court order or warrant
Cambridge, Massachusetts (Boston)	June 2014	City Council Resolution	• Will not honor ICE detainer unless in cases where immigration agents have a criminal warrant or Cambridge officials have a legitimate law enforcement purpose not related to immigration
East Haven, Connecticut (Boston)	June 2014	East Haven Police Department Policies and Procedures No. 428.2	• Will not honor ICE detainer
Finney County, Kansas (Chicago)	June 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without probable cause or a warrant
Hernando County, Florida (Miami)	June 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Harvey County, Kansas (Chicago)	June 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without a court order or warrant

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Kings County, California (San Francisco)	June 2014	Sheriff's Office	• It is the policy of the Kings County Sheriff's Office to refrain from honoring detention requests from ICE ("ICE Holds") unless the request is accompanied by a valid and enforceable warrant signed by a judicial officer.
Merced, California (San Francisco)	June 2014	Sheriff Statement	• The Sheriff's Office will no longer place Immigration Detainers (ICE Holds) on inmates in our custody, save for exceptional circumstances, and then only with the approval of the Sheriff or his command level staff and consistent with the law.
Mono County, California (San Francisco)	June 2014	Custody Services Manual	• The Department will not hold a person in custody beyond any applicable release date for the sole reason that ICE requested the Department to hold that person in custody.
Orange County, California (Los Angeles)	June 2014	Sheriff's Statement	• Requires a judicial determination of probable cause or a warrant from a judicial officer.
San Joaquin, California (San Francisco)	June 2014	County Sheriff's Office Decision	• The San Joaquin County Jail will no longer honor immigration detainers from Immigration and Customs Enforcement (ICE) placed by an Immigrations and Customs Agent. This does not apply to arrest warrants signed by a judge.
San Luis Obispo County, California (Los Angeles)	June 2014	Sheriff's Statement	• Sheriff's Office will not detain the inmate on the basis of an Immigration Detainer past his or her scheduled release date.
Sedgwick County, Kansas (Chicago)	June 2014	County Sheriff's Decision	• Will not honor ICE detainer without a court order or warrant
Shawnee County, Kansas	June 2014	Sheriff's Directive	• Will not honor detainers without additional probable cause
Sioux County, Iowa (St. Paul)	June 2014	County Sheriff's Office Decision	• Will not honor ICE detainer unless a judge has approved the move with a probable cause warrant
Story County, Iowa (St. Paul)	June 2014	County Sheriff's Office Decision	• Will not honor ICE detainer unless a judge has approved the move with a probable cause warrant
Alameda County, California (San Francisco)	May 2014	Sheriff's Decision	• No longer accept detainers unless they are accompanied by an arrest warrant signed by a judge.

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Aurora Detention Center, Aurora Colorado (Denver)	May 2014	Detention Center Decision	• Will not honor ICE detainer
Chester County, Pennsylvania (Philadelphia)	May 2014	County Prison's Policy	• Will not detain individuals solely based on an ICE detainer • Will allow ICE agents access to daily population reports and other records for investigative purposes
Clallam County, Washington (Seattle)	May 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Contra Costa County, California (San Francisco)	May 2014	Sheriff's Decision	• Requires an accompanying arrest warrant to honor detainer.
Delta County, Colorado (Denver)	May 2014	Sheriff's Decision	• Will notify five days prior to release but will not honor detainer
Inyo County, California (San Francisco)	May 2014	Sheriff's Decision	• Requires an accompanying arrest warrant to honor detainer
Jefferson County, Washington (Seattle)	May 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Lehigh County, Pennsylvania (Philadelphia)	May 2014	Board of Commissioners Resolution 2014-36	• Will not honor ICE detainer without a judicially issued detainer, warrant, or order
Mendocino County, California (San Francisco)	May 2014	Mendocino County Sheriff's Policy and Procedure Manual	• Requires a valid and enforceable warrant.
San Bernardino, California (Los Angeles)	May 2014	Sheriff's Statement	• Detainers must be accompanied by a signed court order.
San Juan County, Washington (Seattle)	May 2014	County Sheriff's Office Decision	• Will not honor ICE detainer

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Santa Barbara County, California (Los Angeles)	May 2014	Sheriff's Statement	• Requires a judicial determination of probable cause or a warrant from a judicial officer.
Skagit County, Washington (Seattle)	May 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Somerville, Massachusetts (Boston)	May 2014	Mayoral Executive Order and Board of Alderman Ordinance	• Will not honor ICE detainer unless ICE provides criminal warrant or if there is a legitimate law enforcement purpose beyond immigration status for keeping a suspect in custody after bail is posted or a judge releases the individual
Sutter County, California (San Francisco)	May 2014	Sutter County Jail Policy	• Will continue to notify ICE when we have a possible immigration violation • Will not hold someone past the time their local charges would otherwise cause them to be released.
Whatcom County, Washington (Seattle)	May 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Baker County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Bucks County, Pennsylvania (Philadelphia)	April 2014	County Department of Corrections Policy	• Will not hold solely on an ICE detainer, but will notify ICE via email of a pending release from custody
Clackamas County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer unless there is probable cause for such detention
Clark County, Washington (Seattle)	April 2014	Chief Jail Deputy's Decision	• Will not honor ICE detainer unless ICE provides an affidavit of probable cause
Clatsop County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Coos County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Cowlitz County, Washington (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Deschutes County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Douglas County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Grant County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Jackson County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Jefferson County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Josephine County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Lincoln County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Malheur County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Marion County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Montgomery County, Pennsylvania (Philadelphia)	April 2014	County Correctional Facility's Policy	• Will not honor ICE detainer • Will not accept anyone brought to it solely on an ICE detainer • Has daily contact with ICE

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Multnomah County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Polk County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Springfield Police Department, Oregon (Seattle)	April 2014	Department Policy	• Will not honor ICE detainer without court order or warrant
Snohomish County, Washington (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Thurston County, Washington (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer
Tillamook County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Polk County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Union County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Walla Walla County, Washington	April 2014	Special Order 2014-002	• Will not hold individuals on the authority of an ICE detainer
Wallowa County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Washington County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant Sheriff's office will now only send a daily roster of foreign-born individuals in county custody instead of notifying ICE of each person individually

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Philadelphia, Pennsylvania (Philadelphia)	April 2014	Mayoral Executive Order	• Will honor ICE detainer where the alien has a prior conviction for a first or second degree felony offense involving violence and the detainer is accompanied by a judicial arrest warrant • Order also prohibits notice to ICE of the pending release of subjects of interest to ICE unless the above criteria is met
Yamhill County, Oregon (Seattle)	April 2014	County Sheriff's Office Decision	• Will not honor ICE detainer without court order or warrant
Napa, California (San Francisco)	February 2014	Napa County Sheriff's Office	• A deputy should consider the seriousness of the offense, community safety, potential burden on ICE, and the impact on the immigrant community when determining whether or not to notify ICE.
Yuba, California (San Francisco)	January 2014	Yuba County Jail Manual	• The Yuba County Sheriff's Department will no longer accept ICE detainers for foreign born arrestees.
California	January 2014	Trust Act	• On January 1, 2014, California's AB 4, also known as the Trust Act, went into effect, specifying that local law enforcement agencies need only honor ICE detainers for aliens who meet at least one of the following criteria: o Specific serious or violent felony conviction; o Felony conviction punishable by state imprisonment; o Specific sexual crimes conviction; o Misdemeanor conviction within the past five years for a crime that is punishable as either a misdemeanor or a felony, or conviction at any time of a felony for specified offenses o Federal conviction that meets the definition of aggravated felony; o Outstanding federal felony arrest warrant as identified by ICE; o Arrested and taken before a magistrate on a serious or felony charge other than domestic violence and warranting a probable cause finding; or o Currently registered in the California Sex and Arson Registry.
Connecticut	January 2014	Trust Act	• Law enforcement agencies will honor ICE detainers if an individual is: o Convicted of a felony, o Subject to pending criminal charges, has an outstanding arrest warrant, o Identified gang member, among other criteria • Additionally, Local law enforcement agencies will not enforce ICE Detainer Requests solely on the basis of a final order of removal, unless accompanied by a judicial warrant, or past criminal conviction, unless the conviction is for a violent felony.

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
King County, Washington (Seattle)	December 2013	Ordinance 2013-0285 ICE Detainer Ordinance	• Convicted of a homicide at any time in the past; • Convicted of a violent, serious, sex, or serious traffic offense within the past 10 years; or • Released from prison after serving sentence for violent, serious, sex, or serious traffic offense conviction, among other criteria • Accompanied by criminal warrant
Newark, New Jersey (Newark)	July 2013	Newark Police Department General Order 13-04	• Will not honor ICE detainer
Washington, DC (Washington DC)	July 2012	Immigration Detainer Compliance Amendment Act of 2011	• Requires written agreement from ICE reimbursing costs in honoring detainer; and that the alien is: o Convicted of a dangerous crime; o Convicted of a crime of violence within the last 10 years; o Convicted of a homicide; or o Released in the past five years for these crimes
Chicago, Illinois (Chicago)	July 2012	Municipal Code of Chicago Chapter 2-173-005 and 2-173-042	• Has an outstanding criminal warrant; • Convicted of a felony; • Is a defendant in a criminal case where a judgment has not been entered and a felony charge is pending; or • Identified as known gang member
Milwaukee, Wisconsin (Chicago)	June 2012	Resolution 12-135	• Convicted of at least one felony or two non-traffic misdemeanor offenses; o Convicted or charged with any domestic violence offense or any violation of a protective order; o Convicted or charged with intoxicated use of a vehicle; o Is a defendant in a pending criminal case; o Has an outstanding criminal warrant; o Identified as known gang member; or o Is a possible match on the US terrorist watch list
Amherst, Massachusetts (Boston)	May 2012	Bylaw Regarding Sharing of Information with Federal Agencies	• To the extent permissible by law, will not honor immigration detainer requests
Santa Cruz County, California (San Francisco)	May 2012	Board of Supervisors Resolution	• Will not honor detainer unless individual convicted of serious or violent felony
Providence, Rhode Island	March 2011	Resolution of the City Council	• The State of Rhode Island does not honor ICE detainers

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Santa Clara County, California (San Francisco)	October 2011	County Resolution	• Will hold an additional 24 hour period after they would have otherwise be released as long as: (1) all costs incurred are reimbursed by ICE, (2) the individual is convicted of a serious or violent felony for which they are currently in custody, (3) the individual has been convicted of a serious felony in the past 10 years of the request or has been has been released after serving a sentence for a serious or violent felony within 5 years of the request, whichever is later.
Cook County, Illinois (Chicago)	September 2011	Ordinance 11-0-73; Chapter 46 Law Enforcement, Section 46-37 of Cook County Code	• Requires written agreement from ICE reimbursing costs in honoring detainer
Taos County, New Mexico (El Paso)	January 2011	Taos County Adult Detention Center Policies and Procedures	• Will only hold aliens with at least one felony or two or more misdemeanors
Lebanon County, Pennsylvania (Philadelphia)	August 2008	County Correctional Facility's Policy	• Will not hold individuals solely on ICE detainers • Will send weekly reports to ICE about newly incarcerated individuals, and allows ICE to access the facility and records
Hartford, Connecticut (Boston)	August 2008	Article XXI - City Services Relating To Immigration Status (Ord. No. 20-08, 8-11-08)	• Will not arrest or detain a person based solely on their immigration status unless there is a criminal warrant
Clarion County, Pennsylvania (Philadelphia)	September 1997	County Corrections Policy	• Will not hold individuals solely based on ICE detainer; requires legal and authorized commitment paperwork
Calaveras County, California (San Francisco)	Undated	Jail Policy	• Must be accompanied by federal warrant or judicial determination of probable cause to comply with hold but will notify ICE of release date.
Lake, California (San Francisco)	Undated	County Sheriff Decision	• Will not hold inmates in regards to their immigration status.
Glenn County, California (San Francisco)	Undated	Sheriff's Decision	• Requires an accompanying court order to honor detainer.

Jurisdiction (AOR)	Date Enacted	Policy	Criteria for Honoring Detainer
Mariposa, California (San Francisco)	Undated	Sheriff's Statement	• Mariposa County Sheriff's Office Custody Division does not hold or detain persons based exclusively upon a "detainer" or "hold request" issued by the U.S. Department of Immigration and Customs Enforcement (ICE).
Pike County, Pennsylvania (Philadelphia)	Undated	Correctional Facility's Standard Operating Procedures	• ICE detainers are not acceptable commitment paperwork nor can be used as a valid hold • Has a contract with ICE to hold those who are in federal custody pending immigration proceedings
Sacramento County, California (San Francisco)	Undated	Sheriff's Statement	• Will not hold individuals past release date

Section IV: Report Scope and Data Fidelity

Operational/Policy

1. Some field offices ceased issuing detainers to known uncooperative jurisdictions. ICE field offices have been recently instructed to issue detainers on all removable aliens in a LEA's custody. As a result, the number of issued detainers is expected to increase over the next several reporting periods.

2. Currently, uncooperative jurisdictions prevent ICE from knowing when an alien has been released from custody. Consequently, active detainers exist for aliens who are no longer incarcerated. The field offices are in the process of reviewing outstanding active ICE detainers, potentially affecting the list of jurisdictions listed in future reporting periods.

3. ICE field offices are also being instructed to update the criminal history information contained within ICE's records at the time of detainer issuance, as ICE does not normally enter criminality until it assumes custody post-processing. Hence, the list of crimes reported for aliens subject to detainers that are subsequently declined may be temporarily under-reported until this new change improves data quality.

4. At present, ICE does not document, in a systematically reportable manner, the immigration status of an alien at time of detainer issuance. ICE sends detainers to law enforcement agencies, which requests aliens be turned over to ICE prior to release, if ICE possesses probable cause to believe that the alien is removable from the United States.

Statistical Reporting

5. ICE will update this report weekly, noting the time period for which it collected data. Data reflected will be 6 weeks past to ensure data integrity.

6. ICE compiled this report based on jurisdictions with detainers that were declined between February 4, 2017 and February 10, 2017, regardless of detainer issuance date. As such, the declined detainers may include a combination of I-247, I-247D, I-247N, and/or I-247X forms.

7. This report should not be considered an exclusive factor in determining a jurisdiction's level of cooperation with and support of ICE or the law enforcement community.

8. The I-247N form and some I-247X forms requested that the LEA provide notice to ICE as early as possible, or as early as practicable before the subject is released from LEA custody (at least 48 hours). This notification is intended to allow ICE time to respond and take custody of the alien where resources may not be instantly available. This report may reflect instances in which the LEA may have technically provided notification to ICE in advance of an alien's release, but where the LEA did not provide sufficient advance notification for ICE to arrange the transfer of custody prior to release due to geographic limitations, response times, or other logistical reasons. In these instances ICE records the detainer as declined by the LEA.

9. This report does not, nor does it intend to create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; contractors or any other person.