

GUIDANCE MEMORANDUM

LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAW:
LEGAL GUIDANCE FOR MARYLAND STATE AND
LOCAL LAW ENFORCEMENT OFFICIALS



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INTRODUCTION¹

Immigration enforcement is a function exclusively within the authority of the federal government.² A complex set of federal laws and regulations governs who can enter and remain in the United States, the decision to detain or release a person without status, which non-residents can work and under what circumstances, and when a non-resident's presence in the United States is, or is not, a crime.

Under certain circumstances, federal officials will call upon local law enforcement to assist U.S. Immigration and Customs Enforcement ("ICE") and the Customs and Border Protection ("CBP") officials with the enforcement of federal immigration law. Constitutional, federal, and Maryland State laws control when State and local law enforcement can provide information or assistance for the purposes of immigration enforcement and when such assistance is prohibited. This guidance is intended to describe what is required, what is allowed, and what is prohibited. Not every situation can be anticipated or addressed. Questions from State and local officials about this guidance should be directed to their government counsel.

When considering whether to engage or assist in immigration enforcement or in interactions with federal immigration officials, State and local law enforcement agencies ("LEAs") should consider:

1. Law enforcement officers are prohibited from asking about a person's immigration status during regular police functions unless it is relevant to a crime being investigated by that officer.
2. Law enforcement officers may not extend a detention to investigate a person's immigration status or based on the suspicion that the individual has committed a civil immigration violation.
3. State and local law enforcement officers cannot be prohibited from sharing information about a detainee's citizenship or immigration status with federal immigration officials, but they are not required to do so either.
4. State and local law enforcement are generally prohibited from sharing other types of personal information about a detainee, such as their name and address, with federal immigration officials for purposes of immigration enforcement absent a judicial warrant.
5. Enforcement of immigration detainers that do not include a warrant signed by a judge and are not based on probable cause that a crime has been committed may violate an individual's Fourth Amendment rights and subject an LEA to civil liability. The government bears the burden of proving that a person's detention beyond their State-

law release date does not violate the Fourth Amendment and its Maryland counterpart.

6. LEAs face potential civil liability if they seek to enforce federal immigration laws, particularly if they do so outside the context of a federal cooperation agreement under 8 U.S.C. § 1357(g)(1).
7. LEAs must absorb all costs associated with federal cooperation agreements under 8 U.S.C. § 1357(g)(1). The federal government does not provide reimbursement for these agreements, and the agreements may increase the risk of unconstitutional racial or ethnic profiling and subject local LEAs to litigation and liability.
8. LEAs are prohibited from entering into contracts or agreements with detention facilities owned, managed, or operated by a private entity, in whole or in part, for the detention of immigrants.

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

Effective law enforcement requires the trust of all communities. Law enforcement officers rely on residents to provide information to prevent and solve reported crimes. This is especially true of immigrant communities who may be reluctant to engage with law enforcement due to potential immigration consequences or the perception of racial and ethnic profiling. Immigrants with and without lawful immigration status may mistrust a law enforcement agency if its officers are perceived to be involved in immigration enforcement. To provide local law enforcement agencies with the tools to build this trust, the Maryland General Assembly has enacted laws to govern interactions with immigrants. Those laws are discussed in this guidance.

LOCAL PARTICIPATION IN THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS IS LIMITED

A. The Federal Government Cannot Compel Local Law Enforcement Officials to Enforce Immigration Law

The Tenth Amendment to the United States Constitution bars the federal government from requiring local law enforcement officials to enforce federal immigration laws.³ The Tenth Amendment limits the federal government's ability to mandate particular action by states and localities, including in the area of federal immigration law enforcement and investigations. The federal government cannot "compel the States to enact or administer a federal regulatory

program,” or compel state employees to participate in the administration of a federally enacted regulatory scheme.⁴ Coercive efforts by the federal government to compel a state to enforce a particular policy may constitute impermissible “commandeering” under federal law. The anti-commandeering restrictions of the Tenth Amendment extend not only to states but also to localities and their employees.⁵ Voluntary cooperation with a federal scheme does not present Tenth Amendment issues, but the federal government may not force state or local officials to carry out federal law, either directly or indirectly, through the withdrawal of unrelated federal funding.⁶

Federal law does not impose civil or criminal liability on state and local law enforcement officials who decline to assist in immigration enforcement efforts. Attorney General Brown, along with the attorneys general from ten other states, recently reiterated this point.⁷ The federal government cannot require state and local LEAs to assist in immigration enforcement, and it is not a crime for state and local officials to decline to provide such assistance.⁸ In fact, in many instances, as discussed below, Maryland law prohibits the provision of such assistance.

B. Law Enforcement Officers May Not Inquire About a Person’s Immigration Status Except Under Limited Circumstances

Effective in January of 2022, the Maryland General Assembly enacted two laws affecting the way State and local law enforcement may legally interact with the immigration system: Maryland Criminal Procedure Article § 5-104, which details when and how a police officer may inquire as to a person’s immigration status, and Maryland Corrections Article § 1-102, which details restrictions on the type of agreements that local jurisdictions can enter into with private detention facilities and forbids State and local governments from entering into immigration detention agreements.

Maryland Criminal Procedure Article § 5-104 broadly prohibits law enforcement agents from inquiring about an individual’s “citizenship, immigration status, or place of birth during a stop, a search, or an arrest,” while engaging in the performance of “regular police functions.”⁹ The law similarly prohibits law enforcement agents from detaining, or extending the detention of, an individual for the purposes of “investigating the individual’s citizenship or immigration status, or based on the suspicion that the individual has committed a civil immigration violation,” and/or from intimidating, threatening, or coercing any individual on the basis of the actual or perceived immigration status of the individual or their family member, legal guardian, or someone whom they serve as a guardian.¹⁰ Finally, the law prohibits State law enforcement officers from transferring an individual to federal immigration authorities unless specifically required to do so by federal law.

There are two key exceptions to § 5-104’s prohibitions. First, “[n]othing in this subsection shall prevent a law enforcement agent from inquiring about any information that is material to a criminal investigation.”¹¹ This means that if an individual’s immigration status is directly relevant to a criminal investigation, such as during a human trafficking investigation

involving trafficking individuals across international borders, law enforcement officials may make limited inquiries into the immigration status of the individuals involved in the investigation, but only so far as the questions are directly related to the core of the investigation itself. It is recommended that law enforcement agents be cautious when making such inquiries, and to take care not to allow their immigration-related questions to expand beyond the narrow exception the law permits.¹²

Second, if a person's immigration or citizenship status is directly linked to legal protections afforded to that individual under State or federal law, a law enforcement agent may notify an individual that the legal protection exists and allow the individual the opportunity to self-disclose their immigration and/or citizenship status to avail themselves of the legal protection or to satisfy a legal requirement. An example of this that may arise for local law enforcement agents would be the U-Visa process, which permits certain immigrants without lawful status who were victims of a crime to become eligible for a visa to remain in the United States if they cooperate with police investigations into the crime perpetrated against them.¹³

C. Law Enforcement Officers Can but Are Not Required to Share Information about Immigration Status with Immigration Officials

While the collection of immigration related information is prohibited under Maryland law, federal law does not require the local government agency or law enforcement officer to communicate with federal immigration authorities. Rather, federal law only requires that state and local governments not bar their employees from sharing certain types of information with federal immigration authorities. Specifically, 8 U.S.C. § 1373 provides that state and local governments cannot prohibit employees or entities "from sending to, or receiving from, [federal immigration authorities] information regarding the citizenship or immigration status, lawful or unlawful, of any individual."¹⁴ In addition, state and local governments may not impose restrictions on "exchanging" information regarding "immigration status" with "any other Federal, State, or local government entity" or on "maintaining" such information.¹⁵

By its terms, 8 U.S.C. § 1373 applies only to information regarding an individual's "citizenship" or "immigration status"; it does not apply to other types of information, such as information about an individual's release, next court date, or address.¹⁶ In addition, § 1373 places no affirmative obligation on LEAs to collect information about an individual's immigration status. Maryland has enacted laws that prohibit officers and employees from inquiring about a person's immigration status except under narrow circumstances.¹⁷

D. Law Enforcement Officers May Not Share Other Personal Information, Including Names and Addresses, with Immigration Officials

Maryland law contains another important restriction: it prohibits State and local officials from sharing an individual's photograph or "personal information," such as their name and address, with a federal agency seeking to enforce the immigration laws, except pursuant to a judicial warrant.¹⁸ This provision is not intended to apply to information about citizenship or

immigration status, so it does not prohibit local officials from responding to questions from federal agents about the immigration status of a person already known to the federal agents.¹⁹ But the statute clearly does constrain the ability of local officials to share other types of sensitive information about a person with the federal government for the purposes of immigration enforcement absent a judicial warrant. Thus, before disclosing a person's name, address, or other personal information with federal immigration authorities, local officials should consult with counsel.

E. Duties of Law Enforcement Officers and Correctional Officials Regarding an ICE Detainer

When ICE learns that a local law enforcement agency has custody of an individual who might be in the country without immigration authorization, it might issue what is commonly referred to as an "immigration detainer." An immigration detainer advises local law enforcement that ICE is seeking custody of the individual and asks that the local agency hold the individual "for a period not to exceed 48 hours beyond the time when [the subject] would otherwise have been released" to allow ICE officials the opportunity to assume custody.²⁰

Immigration detainers are requests only; local officers are not obligated to honor them, and, in fact, risk violating constitutional rights by doing so.²¹ Some courts have held that an ICE detainer request does not authorize local officials to hold someone beyond their State-law release date in the absence of a judicial warrant or probable cause that the subject has committed a crime. The issuance of an administrative warrant might authorize an arrest by a federal official or a local official operating under a § 287(g) agreement (discussed below, in Part G). But other local officials who hold someone solely on the basis of having received a detainer request may violate that person's constitutional rights and risk civil liability, including monetary damages and attorneys' fees.²² The risk of liability is significant for an illegal detention unless based on a judicial warrant.

An LEA's decision to comply with a detainer request and hold an individual beyond their normal release date constitutes a new "seizure." That new seizure must be justified under the Fourth Amendment and the analogous provisions of Article 26 of the Maryland Declaration of Rights.²³ The requirements of the Fourth Amendment do not change simply because ICE or CBP has issued a detainer request to an LEA.²⁴

F. Contracting for Immigration Detention is Prohibited by Maryland Law

Maryland Corrections Article § 1-102 prohibits the State, local governments, sheriffs, and their employees and agents from entering into contracts or agreements with detention facilities owned, managed, or operated by a private entity, in whole or in part, for the detention of immigrants.²⁵ Similarly, State and local governments may not financially support in any way the costs of creating or maintaining an immigration detention facility that is privately funded, or to receive any payment from the same. Finally, the State, a local government, or an employee or agent of the State or local government may not enter into or renew an immigration detention

agreement.²⁶ However, the law explicitly does not forbid entering in an agreement under 8 U.S.C. § 1357(g).

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

Section 287(g) of the Immigration and Nationality Act – which is codified at 8 U.S.C. § 1357(g) – enables ICE to enter into agreements with state and local law enforcement agencies and authorize designated local officers to perform immigration enforcement functions. After an agreement is signed, officers selected by the state or local agency receive federal training on how to access immigration databases, complete immigration forms, and otherwise carry out the functions of federal immigration agents. State and local law enforcement officials “deputized” through one of these agreements perform the same functions performed by federal immigration agents: they have access to federal immigration databases, may interrogate and take into custody noncitizens believed to have violated federal immigration laws, and may lodge “detainers” against alleged noncitizens held in state or local custody.²⁷

A local law enforcement officer deputized under a 287(g) agreement functions as a federal officer and is treated as such for purposes of the Federal Tort Claims Act²⁸ and worker’s compensation claims²⁹ when performing functions under the agreement.³⁰ In addition, authorized local personnel enjoy the same defenses and immunities from personal liability for their in-scope acts that are available to ICE officers,³¹ and may request – but are not entitled to – representation by the Department of Justice in any litigation arising from activities carried out under the agreement.³²

With federal authority, however, come federal obligations. When local personnel act under federal authority, they must comply with a variety of different federal standards and guidelines. For example, deputized local officials must comply with the federal government’s rules governing the disclosure of impeachment information about potential witnesses.³³ They also must comply with the federal Privacy Act of 1974 and associated regulations and guidelines regarding data collection and use of information.³⁴

The decision to enter into a § 287(g) agreement is purely discretionary; local jurisdictions are not required to do so.³⁵ The federal government does not reimburse local jurisdictions for the expenses their officers incur while assisting with federal immigration enforcement activities.³⁶ Providing such assistance with officers who have only limited expertise and training in immigration enforcement risks the type of racial profiling that is unconstitutional, as our Office stated in our 2015 guidance memorandum, “Ending Discriminatory Profiling in Maryland.”³⁷

CONCLUSION

State and local law enforcement officials may not generally inquire as to an individual’s immigration or citizenship status. They are also prohibited from using immigration status as a means of intimidation or coercion and are broadly prohibited from transferring individuals into the custody of federal immigration authorities unless specifically required to do so by law. Additionally, State and local law enforcement officials are prohibited from financially engaging

with privately funded immigration detention facilities and may not enter into an immigration detention agreement except as permitted by 8 U.S.C. § 1357(g).

Moreover, considerations of public safety and community trust are central to the decision of when and how local law enforcement officials engage with federal immigration officials. Practices that discourage the reporting of crimes and participation in the prevention or solution of crimes make the creation of public safety more difficult and undermine the mission of law enforcement to serve and protect all persons in their jurisdiction.

¹ This guidance applies equally to all non-federal law enforcement officers and agencies, whether they operate at the municipal, county, or state level. To distinguish those officers from federal immigration officers, we will sometimes refer to them together as “local” officials, but at other times we will refer to both State and local entities. These differences in nomenclature are not intended to have substantive effect. This guidance document updates previous guidance issued by the Office of the Attorney General. In August 2014, our Office issued advice on the “ICE detainees” issued by federal immigration officials when they seek custody of suspected removable immigrants. Letter from Adam D. Snyder, Chief Counsel, Opinions & Advice, to the Hon. Douglas W. Mullendore, Washington County Sheriff (Aug. 14, 2014). Our office later released an updated guidance memo in December of 2018 in light of federal measures designed to restrict immigration and intensify the enforcement of federal immigration laws. Guidance Memorandum: “Local Enforcement of Federal Immigration Law: Legal Guidance for Maryland State and Local Law Enforcement Officials” (December 2018).

² *Arizona v. United States*, 576 U.S. 387 (2012); *Truax v. Raich*, 239 U.S. 33, 42 (1915); *Plyler v. Doe*, 457 U.S. 202 (1982); *United States v. Texas*, 599 U.S. (2023) (states lack standing to challenge federal immigration enforcement decisions). Note, Texas has challenged whether the federal government has the exclusive authority over immigration matters in *United States v. Texas*, 96 F.4th 797 (5th Cir. 2024), stay denied *United States v. Texas*, 144 S. Ct. 797 (2024).

³ The Tenth Amendment to the United States Constitution provides that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

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

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

⁶ See *Nat’l Fed. of Ind. Bus. v. Sebelius*, 567 U.S. 519, 576-78 (2012).

⁷ <https://www.marylandattorneygeneral.gov/press/2025/012325.pdf>

⁸ *Id.*

⁹ Md. Code Ann., Crim. Proc. § 5-104. “[A]n agent or employee of a State correctional facility or a local correctional facility” is not considered a law enforcement agent for the purposes of this prohibition. *Id.* § 5-104(a)(5)(ii), (b)(2).

¹⁰ *Id.*

¹¹ *Id.*

¹² So far, there is no case law regarding the scope or breadth of this exception. As such, State and local law enforcement officials are advised to exercise this exception cautiously.

¹³ See <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status> to learn more about U-Visas.

¹⁴ 8 U.S.C. § 1373(a).

¹⁵ 8 U.S.C. § 1373(b).

¹⁶ As discussed below, the U.S. Department of Justice has indicated that it interprets § 1373 to preclude more than express restrictions on information disclosure. See *infra*, § C.

¹⁷ Md. Code Ann., Crim. Proc. § 5-104; *Ocean City Board of Commissioners v Attorney General of the State of New Jersey*, 8 F.3d 176 (3d Cir. 2021) (local governments are permitted to prohibit their employees from enquiring about immigration status).

¹⁸ Md. Code Ann., Gen Prov. § 4-320.1.

¹⁹ See *id.* § 4-101(h); Letter from Sandra Benson Brantley, Counsel to the General Assembly, to Del. Dana Stein (Feb. 8, 2018) (explaining that 8 U.S.C. § 1373 “does not preclude a State from enacting policies governing non-disclosure of other types of information [beyond information regarding citizenship or immigration status]”).

²⁰ See Form I-247A (“Immigration Detainer – Notice of Action,” March 2017).

²¹ See, e.g., *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir.2014); *United States v. Valdez-Hurtado*, 638 F. Supp. 3d 879, 889 (N.D. Ill. 2022); *Alfaro-Garcia v. Henrico County*, 2016 WL 5388946 (E.D. Va., Sept. 26, 2016); *People ex rel. Swenson v. Ponte*, 46 Misc.3d 273 (N.Y. Supr. Ct. 2014). See also, Guidance from ICE, [Immigration Detainers | ICE](#). Immigration detainers should not be confused with interstate criminal detainers subject to the Interstate Agreement on Detainers, which Maryland officials are obligated to fulfill. See generally Md. Code Ann., Corr. Serv. §§ 8-401 through 8-417.

²² See, e.g., *Santos v. Frederick County Bd. of Comm’rs*, 725 F.3d 451, 464-65 (4th Cir. 2013); *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015); *Miranda-Olivares v. Clackamas County*, No. 3:12-CV-02317-ST, 2014 WL 1414305 (D. Or. Apr. 11, 2014); *People ex rel. Swenson v. Ponte*, 46 Misc.3d 273 (N.Y. Supr. Ct. 2014); see also *Gerstein v. Pugh*, 420 U.S. 103, 111-12 (1975) (discussing underlying basis of Fourth Amendment’s probable cause requirement). Liability will also depend, of course, on the applicability of other legal principles that govern the tort liability of State and local officials under 42 U.S.C. § 1983 and the State and local tort claims acts. Those issues, however, are beyond the reach of this analysis.

²³ See, e.g., *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *Hernandez v. United States*, 939 F.3d 191, 200 (2d Cir. 2019); cf. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (noting that a legitimate seizure “can become unlawful if it is prolonged beyond the time reasonably required” to achieve its purpose); see also *King v. State* 434 Md. 472, 482-84 (2013); *Washington v. State*, 482 Md. 395, 454, 287 A.3d 301, 336 (2022) (construing Article 26 *in pari materia* with the Fourth Amendment); Title 2 of the Criminal Procedure Article, Annotated Code of Maryland (governing the arrest process under Maryland law). See also, *Gonzales v. City of Peoria*, 722 F.2d 468, 474-75 (9th Cir. 1983) (discussing the distinction between criminal and civil federal immigration law).

²⁴ See *Orellana v. Nobles County*, 2017 WL 72397, at *8 (D. Minn. Jan. 6, 2017) (stating that immigration detainers “do not categorically provide law enforcement a constitutionally permissible predicate for an arrest”); see also, e.g., *Buquer v. City of Indianapolis*, 2013 WL 1332158, at *8 (S.D. Ind. Mar. 28, 2013). In past court filings, ICE has taken the contrary position that immigration detainers do provide probable cause for state officers to detain someone. See *Brief of the United States as Amicus Curiae in Support of Neither Party, Massachusetts v. Lunn*, No. SJC-12276 (Mass., filed March 27, 2017) (citing *People v. Xirum*, 45 Misc. 3d 785 (N.Y. Supr. Ct. 2014) and *Miranda-Olivares v. Clackamas County*, No. 3:12-CV-02317-ST, 2014 WL 1414305, at *11 (D. Or. Apr. 11, 2014)).

²⁵ Md. Code Ann., Corr. Servs. § 1-102.

²⁶ *Id.*

²⁷ See § E (discussing detainers).

²⁸ 28 U.S.C. §§ 1346(b)(1), 2671-2680.

²⁹ 5 U.S.C. § 8101 *et seq.*

³⁰ See 8 U.S.C. § 1357(g)(7); 28 U.S.C. § 2671.

³¹ See 8 U.S.C. § 1357(g)(8).

³² See 28 C.F.R. § 50.15.

³³ See Model § 287(g) Agreement ¶ XII, available at https://www.ice.gov/doclib/detentionreform/pdf/287g_moa.pdf; *Giglio v. United States*, 405 U.S. 150 (1972) (requiring the disclosure of material tending to impeach the character or testimony of the prosecution witness in a criminal case).

³⁴ See 5 U.S.C. § 552a, 6 C.F.R. §§ 5.20-5.36.

³⁵ There are several policy considerations that are outside the scope of this legal guidance but that jurisdictions might wish to consider before entering into these agreements. For example, the enforcement of federal immigration laws might divert resources from the investigation of local crimes. Formal participation in federal immigration enforcement— particularly by patrol officers— might also discourage immigrant communities from coming forward with information about criminal activity. There are a number of reports describing how the local enforcement of federal immigration law can affect police/community relations. *See, e.g.*, American Immigration Council, “The 287(g) Program: An Overview” (Mar. 15, 2017); Nik Theodore, Department of Urban Planning and Policy, University of Illinois at Chicago, “Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement” (May 2013). In addition, these agreements might discourage immigrant communities from coming forward to testify in court. *See* Letter from Brian E. Frosh, Attorney General of Maryland, to the Hon. John Kelly, Secretary, Department of Homeland Security et al. (March 2, 2017), at www.marylandattorneygeneral.gov/News%20Documents/Homeland%20Security_Ltr_030117.pdf.

³⁶ *See* 8 U.S.C. § 1357(g)(1) (stating that the actions of local officials under a cooperative agreement must be carried out “at the expense of the State or political subdivision”).

³⁷ Guidance Memorandum, “Ending Discriminatory Profiling in Maryland” (Aug. 2015), at http://www.marylandattorneygeneral.gov/Reports/Ending_Discriminatory_Profiling.pdf; *see also Santos v. Frederick County Board of Commissioners*, 725 F.3d 451, 459 n.2 (4th Cir. 2013) (observing that, while the Fourth Circuit has not addressed the issue, “two other Circuit Courts have indicated that consensual encounters initiated solely based on race may violate the Equal Protection Clause”).