



Guidance to Law Enforcement:
Prohibitions Under Illinois Law on
Engaging in Immigration Enforcement

Updated July 12, 2019



Guidance to Local Law Enforcement on Prohibitions Under Illinois Law on Engaging in Immigration Enforcement Activities

Despite the growing presence of federal immigration authorities in our communities in recent years, Illinois law largely prohibits law enforcement in Illinois from assisting with such operations or engaging in immigration-related actions. This guidance is intended to clarify the restrictions on Illinois law enforcement agencies and officials to participate in immigration enforcement under Illinois law.

I. Purpose

Local law enforcement¹ in Illinois is dedicated to protecting the communities it serves. Promoting public safety requires the assistance and cooperation of the community so that law enforcement has the ability to gather the information necessary to solve and deter crime. Law enforcement has long recognized that a strong relationship with the community encourages individuals who have been victims of or witnesses to a crime to cooperate with the police. The trust of residents is crucial to ensure that they report crimes, provide witness statements, cooperate with law enforcement and feel comfortable seeking help when they are concerned for their safety.

Building this trust is particularly crucial in immigrant communities where residents may be reluctant to engage with their local police department if they are fearful that such contact could result in deportation for themselves, their family or their neighbors. This is true of not only undocumented individuals who may be concerned about their own immigration status, but also U.S. citizens who may be worried about their parents, their children or other members of their family who immigrated to the United States. To that end, Illinois law enforcement is governed by the Illinois TRUST Act, which helps bolster cooperation with communities and confirms that law enforcement entities in Illinois are largely prohibited from participating in immigration enforcement operations.

Police officers will be hindered in protecting public safety if violent crimes go unreported or witnesses withhold information.² For the safety of the community and to effectively carry out their responsibilities, local law enforcement officials have an interest in making sure that their policies and conduct do not create barriers that discourage or prevent cooperation from the immigrant community and their families.

¹ Throughout this guidance, “local law enforcement” is used to describe state and local law enforcement agencies such as municipal police departments, sheriffs’ offices, Illinois State Police and other non-federal law enforcement authorities, including campus police departments of public and private higher education institutions.

² See Min Xie & Eric P. Baumer, *Neighborhood Immigrant Concentration and Violent Crime Reporting to the Police: A Multilevel Analysis of Data from the National Crime Victimization Survey*, 57 CRIMINOLOGY 2 (May 2019) (observing much lower rates of violence reporting in newer immigrant communities).

II. Prohibitions on the Authority of Local Law Enforcement to Engage in Enforcement of Federal Civil Immigration Law: The Illinois TRUST Act and Beyond

Local law enforcement's role in the enforcement of immigration law is limited and is not required by federal law. Illinois law prohibits certain forms of participation in immigration enforcement by state and local law enforcement. Specifically, local law enforcement is not required to engage in immigration enforcement; cannot detain an individual pursuant to a federal administrative warrant; cannot detain an individual pursuant to an ICE Immigration Detainer request; and is under no affirmative legal obligation to share any information about individuals in its custody with federal immigration authorities. **Importantly, local law enforcement officers cannot arrest an individual for violation of a federal law without a warrant unless state law has granted them authority to do so,³ and Illinois law prohibits local law enforcement from stopping, arresting, searching, or detaining an individual based on his or her citizenship or immigration status.⁴** Beyond these limitations, no federal law compels law enforcement in Illinois to assist with or participate in any immigration enforcement action.

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

Any requests by the federal government to participate in immigration enforcement activities must be viewed as requests for voluntary cooperation. As a result, local law enforcement bears the responsibility for the consequences of its decision to comply with such a request.⁵ The federal government cannot require local law enforcement to enforce federal law.⁶ On the contrary, any authorization from the federal government for local law enforcement to enforce federal law is only effective if it is accompanied by authority under state law.⁷ Consequently, any requests from federal immigration authorities—such as ICE or U.S. Customs and Border Protection (CBP)—for assistance from local law enforcement to detain an individual or requests for access to individuals held by local authorities are requests, not obligations.⁸ **Jurisdictions interested in engaging in such conduct should understand that Illinois law has**

³ *Arizona v. United States*, 567 U.S. 387, 414 (2012) (noting that “authority of state officers to make arrests for federal crimes is, absent federal statutory instruction, a matter of state law”) (citing *United States v. Di Re*, 332 U.S. 581, 589 (1948)).

⁴ 5 ILCS 805/15(b).

⁵ *See Villars v. Kubiatowski*, 45 F.Supp.3d 791, 801–03 (N.D. Ill. 2014) (denying motion to dismiss claims against village police department for detaining individual post-bond); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014) (finding that county was liable for unlawful detention pursuant to Immigration Detainer).

⁶ *Printz v. United States*, 521 U.S. 898, 923–24 (1997) (finding that the 10th Amendment prohibits the federal government from compelling the States to enact or administer a federal regulatory program).

⁷ *Arizona*, 567 U.S. at 414.

⁸ *Moreno v. Napolitano*, 213 F. Supp. 3d 999 (N.D. Ill. 2016); *Galarza*, 745 F.3d at 645; *Ortega v. U.S. Immigration & Customs Enforcement*, 737 F.3d 435, 438 (6th Cir. 2013); *Liranzo v. United States*, 690 F.3d 78, 82 (2d Cir.2012); *United States v. Uribe-Rios*, 558 F.3d 347, 350 n. 1 (4th Cir.2009); *United States v. Female Juvenile*, A.F.S., 377 F.3d 27, 35 (1st Cir. 2004); *Giddings v. Chandler*, 979 F.2d 1104, 1105 n. 3 (5th Cir. 1992).

not authorized local law enforcement to engage in enforcement of federal civil immigration law and that they may face civil liability for doing so.

b. Local law enforcement is prohibited under Illinois law from stopping, arresting, searching, or detaining an individual solely based on citizenship or immigration status.

Immigration is a matter of federal law.⁹ And although some provisions of federal immigration statutes are criminal, deportation and removability are matters of civil law, not criminal law.¹⁰ Whether an individual is lawfully present in the United States is a question of federal *civil* immigration law.¹¹ The U.S. Supreme Court has held that “it is not a crime for a removable alien to remain present in the United States.”¹² Thus, unlawful presence alone does not produce probable cause to find that an individual has committed an offense under Illinois law. The fact that a person may be subject to deportation is not a lawful reason for arrest or detention without a court order.¹³

Accordingly, the Illinois TRUST Act states that a “law enforcement agency or law enforcement official shall not stop, arrest, search, detain, or continue to detain a person solely based on an individual’s citizenship or immigration status.”¹⁴ This is true even if an officer is aware that an administrative warrant has been issued for an individual. In general, local law enforcement officers cannot arrest an individual for violation of a state or federal law without a criminal warrant unless state law has granted them authority to do so.¹⁵ Illinois statute permits arrest by local law enforcement only if the officer has a criminal arrest warrant, has reasonable grounds to believe a warrant has been issued, or has reasonable grounds to believe that the individual is committing or has committed a criminal offense.¹⁶

⁹ *Arizona v. United States*, 132 S. Ct. 2492, 2498-99 (2012).

¹⁰ *See Gonzalez v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983) (discussing the distinction between criminal and civil federal immigration law).

¹¹ *See Gonzalez v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983) (discussing the difference between civil and criminal provisions of the INA).

¹² *Arizona*, 567 U.S. at 407 (“If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.”).

¹³ *Id.*; *see also Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014) (“The [INA] does not authorize federal officials to command state or local officials to detain suspected aliens subject to removal.”); *Morales v. Chadbourne*, 793 F.3d 208, 217–18 (1st Cir. 2015) (new seizures as a result of an Immigration Detainer must be supported by probable cause).

¹⁴ 5 ILCS 805/15(b).

¹⁵ *Miller v. United States*, 357 U.S. 301, 305 (1958) (noting that the lawfulness of a warrantless arrest for violation of federal law by state peace officers is “to be determined by reference to state law”).

¹⁶ 725 ILCS 5/107-2.

- c. *Local law enforcement has no authority under Illinois law to arrest an individual based on an ICE administrative warrant.*

Neither federal nor state law authorizes local law enforcement officers to arrest an individual pursuant to an ICE administrative warrant.¹⁷ Local law enforcement officers may learn that an individual is subject to an administrative warrant when performing a criminal background check in the FBI's NCIC database. However, ICE administrative warrants are prepared by ICE employees and are not approved or reviewed by a judge.¹⁸ By themselves, ICE administrative warrants do not indicate that an individual has committed a criminal offense, nor do they constitute probable cause that a criminal offense has been committed.¹⁹ Furthermore, administrative warrants issued by ICE authorize only U.S. Department of Homeland Security (DHS) or ICE agents to arrest the individual, not local law enforcement. **Thus, any arrest by local law enforcement solely based on an administrative warrant issued by ICE is not an arrest pursuant to a criminal warrant or a finding of probable cause.**²⁰

- d. *Under Illinois law, local law enforcement cannot detain individuals pursuant to a federal immigration detainer request.*

DHS and ICE issue "Immigration Detainers" or "Hold Requests" when they have identified an individual in the custody of local law enforcement who may be subject to a civil immigration removal proceeding.²¹ An Immigration Detainer is a notice from federal authorities that an individual in the custody of local law enforcement may be subject to civil immigration proceedings, and it typically asks the local agency to detain the individual for up to an additional 48 hours past his or her release date to allow federal authorities to assume custody.²² ICE policy establishes that all detainer requests (Form I-247A) will be accompanied by one of two forms signed by an ICE immigration officer: either (1) Form I-200 (Warrant for Arrest of Alien) or (2) Form I-205 (Warrant of Removal/Deportation).²³ These forms are administrative warrants signed by ICE officers that authorize other ICE officers to detain an individual. They are not criminal

¹⁷ See *United States v. Toledo*, 615 F. Supp. 2d 453, 459 (S.D. W. Va. 2009) (discussing the sheriff's lack of authority to enforce an ICE administrative warrant).

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

¹⁹ *El Badrawi v. Dep't of Homeland Sec.*, 579 F. Supp. 2d 249, 276 (D. Conn. 2008); *United States v. Toledo*, 615 F. Supp. 2d 453, 459 (S.D. W. Va. 2009).

²⁰ Illinois law authorizes peace officers to arrest an individual only when a warrant has been issued for a criminal offense—not a civil offense. 725 ILCS 5/107-2.

²¹ See 8 C.F.R. § 287.7; U.S. Immigration and Customs Enforcement, Policy No. 10074.2 "Issuance of Immigration Detainers by ICE Immigration Officers," (March 24, 2017).

²² See *Abdi*, 463 F.3d at 551.

²³ U.S. Immigration and Customs Enforcement, Policy No. 10074.2 "Issuance of Immigration Detainers by ICE Immigration Officers," (March 24, 2017). Similarly, local law enforcement is not authorized to arrest or detain an individual based on the previously issued Form I-247D (Immigration Detainer – Request for Voluntary Action), Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien) or Form I-247X (Request for Voluntary Transfer).

warrants issued by a court and they do not constitute individualized probable cause that an individual has committed a criminal offense. Only federal officers have the authority to arrest an individual for violation of civil immigration law without a criminal warrant.²⁴

Accordingly, the Illinois TRUST Act prohibits law enforcement officials and agencies from complying with Immigration Detainers. It states that a “law enforcement agency or law enforcement official shall not detain or continue to detain any individual solely on the basis of any immigration detainer or non-judicial immigration warrant or otherwise comply with an immigration detainer or non-judicial immigration warrant.”²⁵ The only circumstance in which the above restriction does not apply is if the agency or official “is presented with a valid, enforceable federal warrant”—i.e., one issued by a federal court.²⁶

Beyond this single exception, federal courts have determined that Immigration Detainers are voluntary requests with which local law enforcement need not comply, as they do not constitute individualized probable cause sufficient for detaining an individual.²⁷ Any detention of an individual after his or her normal release date is considered a new arrest and must be based on probable cause that a crime has been committed.²⁸

Holding detainees past their scheduled release time for ICE pickup could expose the law enforcement agency to civil liability, as it has in other jurisdictions.²⁹ Local law enforcement agencies have been held liable for detaining an individual beyond his or her normal release date in response to an Immigration Detainer.³⁰ On top of the prohibitions outlined in the Illinois TRUST Act, the Illinois and federal constitutions prohibit unreasonable searches and seizures.³¹ **Any detention of an individual without a judicial warrant—including prolonging an initial detention—must be supported by probable cause that an individual committed a criminal offense, which is not satisfied by the existence of an ICE administrative warrant.**³²

²⁴ *Arizona*, 567 U.S. at 407; 8 U.S.C. § 1357.

²⁵ 5 ILCS 805/15(a).

²⁶ 5 ILCS 805/15(c).

²⁷ *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d. Cir. 2014); *Moreno v. Napolitano*, 213 F. Supp. 3d 999 (N.D. Ill. 2016) (holding that ICE’s practice of issuing detainers without individualized determination of the equivalent of probable cause was unlawful).

²⁸ *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *Moreno*, 213 F. Supp. 3d at 999.

²⁹ *See supra* note 40.

³⁰ *Santos v. Frederick Cty. Bd. of Comm’rs*, 725 F.3d 451, 464–65 (4th Cir. 2013); *see also Villars v. Kubiowski*, 45 F.Supp.3d 791, 801–03 (N.D. Ill. 2014) (denying motion to dismiss claims against village police department for detaining individual post-bond); *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d. Cir. 2014) (finding county liable for unlawful detention pursuant to Immigration Detainer).

³¹ Ill. Const. 1970, art. I, § 6; U.S. Const., amend. IV.

³² *Santos*, 725 F.3d at 464–65; *see also Villars*, 45 F.Supp.3d at 801–03; *Galarza*, 745 F.3d at 645; *see also People v. Hyland*, 2012 IL App (1st) 110966 (finding that investigative alert was not sufficient to support a probable cause for arrest).

- e. Local law enforcement is not required to share information with federal immigration authorities.*

Federal statute provides that no state or local law or policy may prohibit any government entity or official from sharing information about the immigration status of an individual with federal authorities.³³ However, at least one federal court in Illinois and multiple other federal courts have declared this law unconstitutional because it violates the anti-commandeering principle of the Tenth Amendment.³⁴ (This principle states that the federal government is not permitted to “issue direct orders” telling states and localities what to do or not do.³⁵) And in any case, federal law does not *require* local law enforcement to share citizenship or immigration status information with federal authorities in any circumstances; all data sharing by local law enforcement is voluntary.³⁶ **While local law enforcement and other government agencies are not prohibited from sharing or receiving citizenship information, they are not required to do so.**³⁷

Law enforcement agencies should consider whether sharing information about individuals in their custody may diminish their relationship with immigrant communities by deterring individuals from reporting information about a crime or appearing as a witness if these individuals are concerned that their information will be shared with ICE or other federal authorities.³⁸ Any laws or policies regarding the sharing of information with federal authorities should take into consideration their impact on perceptions of trust and confidentiality by the community and how they might affect relations between the community and law enforcement.

- f. Local law enforcement may not enter into immigration enforcement agreements with federal immigration authorities.*

In certain states outside Illinois, local law enforcement may enter into a formal working agreement with the Department of Homeland Security known as a Section 287(g) agreement to assist in the “investigation, apprehension, or detention of aliens in the United States.”³⁹ In June 2019, however, Illinois enacted the Keep Illinois Families Together Act, which prohibits any law

³³ 8 U.S.C. §§ 1373, 1644.

³⁴ *See City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 872 (N.D. Ill. 2018). As of this writing, review of this decision is pending in the Seventh Circuit Court of Appeals. *See also City & Cty. of San Francisco v. Sessions*, 349 F. Supp. 3d 924 (N.D. Cal. 2018); *New York v. Dep’t of Justice*, 343 F. Supp. 3d 213 (S.D.N.Y. 2018).

³⁵ *Murphy v. NCAA*, 138 S. Ct. 1461, 1478 (2018).

³⁶ Law enforcement should be aware that all fingerprint information submitted to the FBI for criminal background checks will be provided to ICE for comparison to its records.

³⁷ *See Printz v. United States*, 521 U.S. 898, 935 (1997).

³⁸ *See City of New York v. United States*, 179 F.3d 29, 34 (2d Cir. 1999) (discussing police department interests in confidentiality of information).

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

enforcement agency or official in Illinois from entering into or remaining in a Section 287(g) agreement.⁴⁰

Federal law does provide that local law enforcement may arrest and detain an individual who has already been convicted of a felony and was deported, but returned to or remained in the United States after that conviction; however, such arrests may be conducted only as permitted by state law,⁴¹ and there is no express or inherent authority under Illinois law that permits state or local law enforcement to enforce federal immigration law.⁴² Furthermore, the TRUST Act explicitly prohibits local law enforcement from participating in immigration enforcement in several circumstances, as discussed above.

III. Summary

- Law enforcement authorities in Illinois are largely prohibited from assisting with any immigration enforcement operation. State law prohibits Illinois law enforcement from entering into immigration enforcement agreements with immigration authorities and from holding an immigrant past his or her release date for ICE pickup or otherwise complying with an immigration detainer.
- Under the Illinois TRUST Act, law enforcement agencies may not stop, arrest, search, or detain any individual on the sole basis that they are undocumented. A removable alien's presence in the United States is not a crime. Arrests may be made only when law enforcement have an arrest warrant or probable cause that a criminal offense has been committed.
- Local law enforcement agencies violate state law and may violate constitutional protections if they detain an individual beyond his or her normal custody release date pursuant to an Immigration Detainer.
- Local law enforcement agencies and officials have no obligation to share any citizenship or immigration information with federal officials, even when requested. Although federal statute currently prohibits limitations on such communications by state officials, the federal law in question has been declared unconstitutional.

⁴⁰ Pub. Act 101-19 (2019), available at <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=101-0019&GA=101>.

⁴¹ 8 U.S.C. § 1252c.

⁴² See *People v. Lahr*, 147 Ill.2d 379, 382, 589 N.E.2d 539 (Ill. 1992) (recognizing that the authority of local police officers to effectuate an arrest is dependent on the statutory authority given to them by the political body that created them); *Gonzalez v. City of Peoria*, 772 F.2d 468 (9th Cir. 1983) (requiring that state law grant local police the "affirmative authority to make arrests" under the specific provisions of the Immigration and Nationality Act that they sought to enforce).

- Local law enforcement agencies should consider whether any internal policies regarding sharing immigration status information with federal immigration authorities will promote trust and confidentiality in their communities.
- Local law enforcement agencies should consider requiring all officers to identify the jurisdiction they represent when engaging with community members or knocking on doors to encourage transparency and cooperation and to avoid any concern or confusion about whether the officers work for federal immigration authorities.